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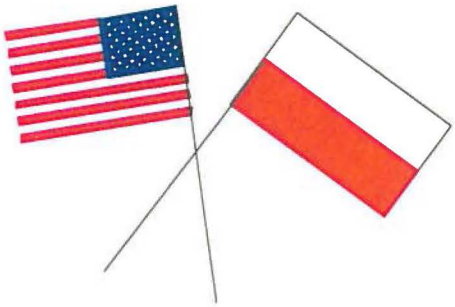
Proposed Blueprint for Polish National Acquisition Strategy



Naval Postgraduate School
Monterey, CA

Report:
Proposed Blueprint for Polish National Acquisition Strategy

25 October 2000

International Defense Acquisition Resource Management (IDARM) Program

PROPOSED BLUEPRINT FOR POLISH NATIONAL ACQUISITION STRATEGY

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Overview

> "Poland, Hungary, and the Czech Republic will now become full members of our Alliance, with the full responsibilities of membership . . . The responsibility to meet NATO's high military standards and to help to bear its cost, because true security requires strength and readiness."
>
> President Clinton's Remarks to the Citizens of Warsaw, July 10, 1997

The acquisition of goods and services for a country's military establishment is a complex and vital undertaking. The context within which it occurs is necessarily different for every government and is subject to change over time. That context includes, among other variables, assumptions concerning the security environment and the resources available to the government to satisfy national security requirements. Democratic governments have developed a variety of arrangements for systematically linking resources to requirements under different security conditions. There is no single best solution. Rather, a review of the acquisition systems of western democracies reveals a family of solutions, none of which is completely satisfactory.

Indeed, acquisition reform is a policy perennial among NATO countries. The imperative to improve acquisition processes has been given further impetus at the close of the twentieth century as a consequence of such factors as the general reduction in defence spending in the decade of the 1990s, the emergence of electronic commerce and the policy of adopting private sector business practices within governmental defence bureaucracies. Where governments find themselves adapting to other, more significant changes, such as fundamental shifts in national security and economic policy orientations, acquisition reforms become even more problematic.

Poland finds itself in such a situation in 2000. With respect to providing for its military needs, the Polish government faces a series of challenges. It has a relatively new democratic political order, most recently refined by the 1997 constitution. It is privatizing its economy, though major portions of the military industrial complex remain in the public domain. It has accepted membership in NATO and is working towards membership in the European Union.

Thus, development of a market-based acquisition system in Poland is no minor undertaking. It is as much about acquisition policy development as it is about acquisition reform. Before new organizations and processes can be put in place or existing ones

amended, we must understand in some detail how acquisition for the Polish military now takes place. Section III of this document is an attempt to capture the essential elements of military acquisition in Poland as we found them in the summer of 2000. Section II contains suggestions for improvements to that system.

This work is based upon information obtained by a team of U.S. defense academics and practitioners associated with the Naval Postgraduate School, Monterey, California. The composition of the team is provided at the end of this document. Information used in the report came from many sources, including lengthy interviews with officials from the Senate, the National Security Bureau of the Office of the President, the Department of Defence Affairs of the Chancellery of the Prime Minister, the Ministry of Finance, the Office of Public Procurement Policy, and various offices within the Polish Ministry of National Defence. These interviews took place in Warsaw in July 2000, and were in some cases augmented by subsequent communications with these officials. In addition, Professor Krzysztof Santarek, Colonel Andrzej Ciarka, and Captain Marek Powalski of the Polish Ministry of National Defence provided invaluable additional insight during their visit to the Naval Postgraduate School in August 2000. The views and recommendations found here, however, are those of the authors alone.

I. Executive Summary

This report consists of recommendations and implementation proposals that are designed to assist the development of a robust National Acquisition Strategy for the Polish Ministry of National Defense. It is the collective work of a team assembled at the Naval Postgraduate School in Monterey California. The team's skills composition consisted of acquisition, program management, contracting, political science, finance and budget, policy analysis and the law.

The four -month study included a literature review, in-country briefings and interviews and additional meetings with Polish MoND personnel in Monterey. The report is functionally divided into four sections:

1. Recommendations and supporting rationale for transitioning the Ministry of National Defense to an acquisition/ program management organizational structure;

2. Observations made by the team during the literature/documents survey and a description of the current acquisition environment in Poland (governmental structure, needs assessment, military requirements, defense policy and external factors, including NATO membership and European Union (EU) membership application);

3. An implementation time line, which discusses in detail how Poland could move from the current system to the program management organizational structure,

4. Reference materials and supporting documents.

The vision for the Polish National Acquisition System is the capability to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility. Recommendations and time line include the development of a professional acquisition workforce with a supporting education and training system utilizing civilian and military institutions of higher education and specialized training facilities. Also included are the delineation of new functional specialties that would allow for acquisition system implementation and management, and office, department and institutional changes that would provide for structure and personnel that would effectively manage the entire acquisition process. The process review considered the following items:

a. Mission review
b. Need based on mission determination
c. Requirements Generation
d. Acquisition Planning

e. System Development Phase
f. Contract Solicitation Phase
g. Contract Source Evaluation/Selection Phase
h. Contract Negotiation Phase
i. Contract Award Phase
j. Contract Administration Phase
k. Ownership Phase (Operation & Support)
l. Disposal considerations

Two heretofore unknown positions in the Polish acquisition process—program manager and contracting officer—are described in detail in the report recommendations, and are considered to be of prime importance in reorganizing the Ministry of National Defense.

The program manager is the leader of the acquisition team and as such has a broad overview of the entire system and must be capable of managing each phase of the acquisition process. He or she is responsible for:

- Developing specifications
- Planning logistical support for the warfighting system
- Planning an acquisition strategy
- Supervising systems engineering
- Integrating product and process development
- Overseeing procurement planning and contract management
- Supervising programming and budget process
- Overseeing testing and evaluation
- Managing risk

This acquisition system management function is of prime importance to centralize and control the acquisition process and is vital to implement efficiency. Previous management of acquisition programs has not been tightly integrated is unwieldy.

The contracting officer manages the documentation and process of contract planning and execution. This person must be trained, formally appointed, and given the requisite authority to enter into, administer and/or terminate contracts and make related determinations and findings. The position is important because the legal, business, and financial functions of procurement come together in the execution of the contractual agreement, a process that must be effectively managed by a trained professional. The education and training requirement for this position are identified. Some of the acquisition functions related to this position include:

- Market research
- Acquisition planning
- Source selection planning/execution
- Negotiation planning/execution
- Contract formation/award
- Post award contract administration

- Business and supplier management
- Contract close-out
- Acquisition/contracting process innovation

Contracting officers are key business advisors in the acquisition process. Not only do they help ensure that customer needs are satisfied in terms of cost, quality and timeliness, they are responsible for: (1) promoting competition, (2) minimizing administrative costs and (3) conducting business with integrity, fairness and openness. Additionally, they should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

Following these reforms in education and personnel structure, additional recommendations also address systemic weakness in the acquisition process: it is strongly recommended that integrated product and process development (IPPD) be adopted. We strongly recommend the thoughtful implementation of a planning, programming and budgeting system (PPBS) to effectively manage defence resources allocated by the national government. PPBS will simultaneously address needs within the force structure and maintain the technical means to evaluate solutions and systems that purport to meet requirements. This document attempts to describe in detail the existing system, analyze weaknesses and provide recommendations for solutions. Most issues addressed are systemic problems and the sum of our recommendations are systemic solutions that will address Polish defence needs while concomitantly suggesting policy solutions that are both pragmatic and feasible. Suggested solutions are generic and have been gleaned from practices in a number of national acquisition systems.

II. Recommendations

Overview

The Requirements Generation System, the Acquisition System, and Planning, Programming, and Budget System (PPBS) are all essential to the acquisition of warfighting systems. Mission deficiencies or opportunities are shaped into statements of requirements through the requirements generation process. While the requirements are being formulated, the PPBS is identifying the resources stream necessary to obtain the warfighting systems. At such time as the clearly articulated statement of performance requirements is handed off for acquisition, the funding stream should be in place to support the acquisition.

Our recommendations will address various facets of all three systems described above.

- Acquisition management—specifically, the introduction of program management, including integrated product and process development
- Procurement—specifically, the statutory basis, contracting organization and processes required
- Requirements generation
- Planning, programming and budget system (PPBS)
- Education and training associated with acquisition and PPBS
- Privatization of government factories. Privatization of these facilities is inextricably tied to acquisition because of: (1) the lack of incentives for government plants to become more efficient and reduce cost; and (2) the lack of a level playing field when government plants compete against private sector contractors for the manufacture of MoND warfighting systems.

Acquisition Recommendations

Transition to Program Management

Recommendation:

The National Acquisition Strategy Team recommends that the Ministry of National Defence transition to a program management organizational structure and processes for acquisition. Program management and the rationale supporting this recommendation are described below.

Background

The Polish Ministry of National Defence does not currently assign program managers and program management teams to lead the acquisition of warfighting systems. This means that acquisition of warfighting systems is accomplished within or among bureaucracies, where various organizational elements and activities accomplish their work in accordance

with detailed central plans but without benefit of dedicated program or product leadership. It is possible to make generalized predictions about such an organization.

First, this organizational arrangement may be able to accomplish work successfully within departments, but usually struggles at the organizational boundaries when coordination must occur between organizational elements, such as between branches or between departments.

Second, acquisition of a new warfighting system includes the work of many different functional specialists, accomplished by the technicians within the various functional bureaucracies. In the absence of program management, most of the functional tasks would normally be done without benefit of discussion with technicians from other functional areas. For example, design engineers, would have little opportunity for discussion with maintenance personnel, training personnel, or spare parts provisioning personnel. Each of these technicians would normally work apart from one another in separate functional bureaucracies.

Third, excessive changes or adjustments in the warfighting system and its support may be required as the result of this organizational structure due to the lapses in cross-functional communication.

Fourth, processes may have to be done sequentially, rather than simultaneously in such an organizational structure, stretching out the acquisition process schedule.

Fifth, technicians working on an acquisition project are unlikely to feel a sense of ownership or of personal satisfaction because they are not able to exert much influence over the whole process.

Sixth, there can be little or no synergy in such an organization because of the impossibility of close teamwork among the different functions.

Finally, the organizational culture does not foster cooperation within organizations. In fact, if a crisis occurs, the separate organizational elements often will try to blame each other. In such an arrangement, it is difficult for individuals in different functional areas to have discussions with each other because the cultures are different. Major disagreements must be resolved at a high level, such as the office chief level or department chief level.

The Design of a Program Management Organization

Key Success Factors. Program management is successful if it delivers into the hands of the military customer within cost estimates, and on time or ahead of schedule, a warfighting system that performs and is sustainable as specified in the requirement. In fact, these are success factors for any acquisition, whether accomplished by program management or any other organizational structure.

Values. The transition to program management must retain or achieve the following values.

- Acquisition of warfighting systems must be accomplished as specified by law and regulation.
- Acquisitions should be well coordinated and efficient in terms of cost and time.
- Program managers must manage risk.
- Program managers must be responsible for all aspects of their programs, know the status of their programs, and provide information on the status of their program. Such information may be needed for a leadership decision, by senior government members to engender political support or to answer criticism.
- New warfighting systems must be of high quality and perform as required.
- New warfighting systems must be sustainable. They must meet their reliability and maintainability goals and must be supportable within the means provided.

Vision. The program manager and his team coordinate the efforts of all the organizations and individuals who participate in the acquisition of a warfighting system. The program management team integrates the work of functional experts to accomplish the necessary work simultaneously, cooperatively, and efficiently.

Organization/Tasks/Jobs. Program management offices may be organized in different ways. For large programs, program management offices sometimes include most or all the functional skills necessary to develop, acquire, and field a new warfighting system. However, the more common practice is to organize small to medium sized program offices that contain the essential functional skills for coordination, and engage the functional organizations to achieve the required work. In general, small to medium sized program management offices offer an economical approach that would fit either full developmental programs or non-developmental programs such as FMS. Program managers with small or medium sized staffs must accomplish their mission by coordinating the work of other organizations; therefore, they must be given strong, clearly defined authority, described in a "PM charter." See Appendix C for "The Program Manager's Bill of Rights" and an example of a PM charter.

The tasks and jobs related to program management are described in DoDD 5000.1 and DoD 5000.2-R, available on the Defense Acquisition Deskbook. The Polish MoND would need to construct similar documents. A useful approach might be for the MoND to use published DoD guidance as a model, extracting and tailoring sections that are relevant for their use.

The program manager is responsible for coordinating all activities during program acquisition, within the authority delegated to him. He must manage the enterprise and coordinate all the essential activities, such as systems engineering, risk management, testing, logistics support planning, financial management, program documentation, contracting, and reporting. His project team is comprised of functional experts who

coordinate the various tasks simultaneously, in an integrated effort, according to a schedule.

Some of the specific functions of a program management team are listed below to help describe the breadth of program management activities. This list is illustrative, not exhaustive. Some of these tasks might actually be accomplished within the program management office, while others might be done elsewhere in one of the government matrix organizations (functional bureaucracies), or by a contractor. In every one of the examples the program manager would be responsible, irrespective of where the work is performed.

Functions of a Program Management Team:

- Develop specifications
- Plan logistical support for the warfighting system
- Obtain resources
- Provide oversight/insight for contractor activities
- Manage risk
- Oversee testing
- Provide information on progress to senior leadership
- Prepare information and documents for milestone decisions and at the specified intervals
- Ensure compliance with law and regulation

Organizational Structure. An organization for program management within the MoND might be as follows.

Armament Policy Department Chain of Command. The program manager should report to the Chief of the Armament Policy Department, who reports directly to the State Secretary, First Deputy Minister of National Defence.

Program Management Team Composition. The team members reporting to the program manager might include a system engineer, logistics planner, financial manager, test planner/coordinator, and others as necessary. A contracting officer would be on the program team but for technical matters should report to the senior member of the contracting activity.

Procurement Relationship. The contracting officer who works on a program management team should report to the senior contracting officer in the Supply Department. The contracting officer receives technical direction through the contracting chain but programmatic direction from the program manager.

Authority. The program manager and his team must be authorized within prescribed bounds to work with any MoND or contractor organization or individual.

The program management team would work directly with sustainment organizations, organizations involved in testing, and Planning, Programming and Budget organizations, and users.

The Workforce

Functional Skills. The acquisition workforce is comprised of many different functional skills. Those who work on product management teams must be knowledgeable in their own functional areas but also know how to coordinate activities with technical specialists in the other functional disciplines.

Education and training are essential to a workforce of empowered people. Specific comments and recommendations on education and training are located in the recommendation entitled, Improvements in Acquisition Education.

Assignment and Rotation Policies. Program managers should choose their teams based on technical skills, experience, and ability to work cooperatively. Program managers and functional chiefs should collaborate in the selection and assignment of personnel.

Process/Subsystems.

There are numerous processes within program management, some of which are listed below. A more detailed list might be extracted from DoD 5000.2-R. Each of these processes is highly specialized. MoND guidance should be prepared to explain the processes used in program management. The above reference and, more generally, the Defense Acquisition Deskbook, contain useful material that MoND might review and tailor as appropriate.

Processes Within Program Management:

- Phases and decision milestones
- Program control and review
- Planning an acquisition strategy
- System engineering process
- Integrated product and process development (IPPD)
- Procurement planning and contract management
- Planning, Programming and Budgeting System (PPBS) process
- Testing and evaluation processes
- Risk management process
- Acquisition logistics planning process, including fielding
- Planning for total ownership cost (TOC)

The Outputs and Outcomes of Program Management

Changing Organizational Culture. Transition to program management should effect valuable organizational cultural change over time, if vigorous leadership support is present. Cultural change does not occur instantaneously but can occur over time,

particularly through education and training. It will occur at different rates in different organizations. Major changes need "champions" at the executive level who are motivators and apply pressure to change (i.e., be the "forcing function"). Intermediate managers are likely to resist change unless they see its benefits or are forced to change; often middle managers feel threatened by change and create obstacles to it. Lower level personnel frequently see the value in change, and respond to education and training if leadership establishes the environment for change.

Integrated Product and Process Development (teaming). This approach offers great benefit and, to a large degree, can be taught. Nearly immediate benefit should result from teaming. However, improvement will fall short of its potential unless team members feel empowered to make decisions.

Coordination. Coordinated work through teaming should result in fewer, less costly mistakes during acquisition of a warfighting system. Coordinated teamwork should show immediate benefit.

Educated and Empowered Workforce. As described above, cultural change takes time and must be relentlessly supported by the leadership. Superiors are often reluctant to empower their subordinates. However, empowerment of a well-educated workforce unleashes creativity and ingenuity that will result in cheaper and better warfighting systems.

Integrity and Ethics in the Program Management Workplace. Because integrity and ethical behavior are essential to empowerment, ethics should be incorporated in the education and training of acquisition personnel. The absence of integrity and ethical behavior will result in loss of confidence by taxpayers, contractors, and the Services that receive the new warfighting systems.

Outputs from Project Managed Programs. Program management is consistent with high quality warfighting systems that are acquired in a timely and efficient manner. Program management should result in products that perform to requirements, meet quality standards, are delivered on schedule, are supportable, and are within cost (to include development, production, operation, sustainment, and disposal).

Reorganization of Acquisition Functions

Recommendation:

The National Acquisition Strategy Team recommends organizational alignment of acquisition functions as follows.

--All system level Program Management should be managed by the Armament Policy Department.

--Program Managers should oversee and coordinate programs during the developmental process (R&D) and during serial production at least until the completion of fielding.

--Technical Support should continue to be overseen by the Armament Policy Department throughout production, fielding and sustainment.

--All R&D and production contracting related to system acquisition should be accomplished in the Supply Department, to include solicitation and contract award, quality assurance, contract payment, and contract administration.

--Contracts for R&D should be accomplished by the Supply Department in support of the Program Manager (or other assigned manager).

--Procurement of repair parts and services should remain in the Supply Department.

Organizational Changes in the Armament Policy Department and the Benefits. The structure described above will permit a single reporting channel through the Director of the Armament Policy Department for all program managers. This will simplify change management during the transition to a program management structure and facilitate the dissemination of lessons learned by the new program management offices. The PM will reach across organizational boundaries as necessary to obtain functional support.

Organizational Changes in the Supply Department and the Benefits. Contracting expertise will be focused in the Supply Department for all contract requirements for major systems. There will be a single chain of authority for large system contracts, flowing through the Director of the Supply Department. This will simplify change management during the transition of the contract management structure and facilitate the dissemination of lessons learned on each contract.

Process Changes. The organizational changes described above will require integrated product and process development. Program management will depend on the integrated efforts of multiple functional organizations. Participants will have to coordinate their efforts, including the flow of information across the boundaries of functional organizations. All functional participants will need to recognize the authority and responsibility of both the Program Manager and Contracting Officer.

Barriers to Organizational Change. Moving personnel into new organizations causes discomfort and frustration. In some instances, even senior personnel may lose some of their authority and may be asked to assume new responsibilities or participate in new processes with which they may be unfamiliar. Such difficulties are transitory and may be made less severe through introductory training and open communications channels. However, the difficulty of cultural change should not be minimized.

Improvements to Requirements Generation

Recommendation:
The National Acquisition Strategy Team recommends that the Ministry of National Defence review the requirements generation process and modify it as necessary to incorporate the key success factors, described below.

Overview

The requirements generation process precedes the acquisition process. Ordinarily, the acquisition program office is not even formed until a statement of performance requirements has been produced.

Requirements generation is the process by which the user requirement or need is developed and validated. The Polish Ministry of National Defence currently has such processes through which the Services prepare requirements documents and hand them off to the MoND Armament Policy Department for acquisition of the warfighting systems.

The Design of a Requirements Generation System

Key Success Factors. A requirements generation system should include the following factors.

- A clear statement of performance requirements for a warfighting system delivered into the hands of the acquisition team.
- Requirements that address warfighting deficiencies or opportunities.
- Requirements that describe in performance terms the warfighting needs of the user (whether single service or joint).
- Statements of performance requirements that are consistent with the National Security Strategy/National Military Strategy.
- Statements of performance requirements that are validated for Joint Service applicability and reviewed to ensure that the need cannot be met by non-materiel means (such as a change in doctrine or training).
- Statements of performance requirements that provide performance "thresholds" and "objectives" defining ranges of successful performance.
- Statements of performance requirements that provide key performance parameters, such that failure to meet any of the key performance parameters would be reason for program reconsideration or termination.
- The integration of users and functional experts working together simultaneously and cooperatively to achieve a statement of need in performance terms.
- Decisions that take into consideration the total ownership cost and sustainability of the future system.

Requirements Generation Guidance

The requirements generation process must be described in such a way that it can be accomplished by those personnel who must use it. The MoND should review published guidance and processes and, if necessary, incorporate changes consistent with the key success factors described above. A useful approach would be to use published U.S. guidance as a resource and extract relevant sections that could be tailored for MoND use. See extracts from "Requirements Generation System," CJCSI 3170.01A in Appendix C. An outline of essential elements is described below.

Responsibilities

The Minister of National Defence or his designated representative approves the statement of performance requirements that has been submitted by the Service Commander and validated by the Chief of the General Staff. In the event that approval of the statement of performance requirement is beyond the authority of the Minister of National Defence, he forwards it to the Council of Ministers or Prime Minister, as appropriate. Following appropriate coordination and approvals, the Minister of National Defence forwards the statement of performance requirements, along with funding recommendation, to the Director of the Armament Policy Department for initiation of the acquisition.

The Chief of the General Staff must perform review and oversight. He is responsible for validating the Service requirement after ensuring that it is consistent with National Security Strategy and National Military Strategy. He must also verify whether or not the Service's statement of performance requirements is fully funded in the Planning, Programming and Budget System. Additionally, he should validate that the requirement cannot be met by a more cost-effective means.

Each Service bears the responsibility for requirements generation. The Service Commander designates the user representative and approves the study team chairman. The Service Commander must decide whether to fund the new requirement within Service funding levels or submit it as an unfunded requirement. Following Service approval, the Service Commander forwards the requirement to the Chief of the General Staff for validation.

The Study Team Chairman reports to the Service Commander and is responsible to manage the requirements generation process and coordinate all the essential activities, within the authority delegated to him. An excellent study team approach for preparing the requirements document is the Integrated Concept Team (ICT). This is described in "Requirements Determination" (U.S. Army Training and Doctrine Command) 1996 published in the Defense Acquisition Deskbook. An extract is provided in Appendix C.

Overview of the Requirements Study Team

The requirements generation process can best be accomplished by a study team. Membership of the study team should include the user who is the chairman of the team. Logistics planners should represent the interests of such functions as maintenance and repair parts supply. Technical and program management personnel on the team provide

insight on technical feasibility, schedule considerations, and costs. Budget analysts must prepare cost estimates for the various alternatives. Other participants may be full time or part time study team members, depending on the particular requirement under consideration. All team members must be empowered to make recommendations and decisions in their areas of expertise and actively participate in the analysis of alternatives.

Study Team Structure

The Service Commander or the user representative should decide the study team structure. Likely team members include the following.

- Experienced operational personnel who thoroughly understand the environment within which the required system must operate.
- Experienced logistics support personnel who thoroughly understand logistics support requirements.
- Functional experts knowledgeable in such areas as system design, software development, manufacturing, logistics planning, testing, contracting, and cost analysis. These functional experts might come from R&D laboratories, academic institutions or contractor organizations.

Interfaces and Coordination

Phases and Decision Milestones. Logical phases of requirements generation are definition, documentation, validation, and approval. These phases are described in "Requirements Generation System," CJCSI 3170.01A. See extract in Appendix C.

The Chain of Command and Reporting Structure. The Chairman of the study team reports through the Service Commander to the Minister of National Defence.

Following validation and funding review by the Chief of the General Staff, the Service Commander provides the validated statement of performance requirements to Minister of National Defence, with coordination copies to the Armament Policy Department Director and the Budget Department Director.

Budgeting process. The Planning, Programming and Budget System (PPBS) must work together with the requirements generation process. As the performance requirements are being assembled, the program funding needs must be identified. Otherwise, the result will be an operational requirement without the necessary funding to acquire and support it.

The requirements generation process should smoothly lead into the acquisition process. Based on validation and necessary approvals, priority of need, technical feasibility, affordability and schedule requirement, the Minister of National Defence directs the Armament Policy Department Director to accept the statement of performance requirements and initiate the acquisition phase. The Armament Policy Department Director may initiate the new program start with a formal milestone decision.

Outputs from the Requirements Generation Process. The study team creates a statement of performance requirements for the new warfighting system, suitable for entry into acquisition. The statement includes user performance requirements, consideration of total ownership cost, and sustainability. Fully integrated, multi-functional teams are likely to produce statements of requirements for warfighting systems that are superior to those produced by other means.

As part of the approval and coordination of the statement of performance requirements, the Chief of the General Staff validates the requirements to ensure that they are consistent with the National Security Strategy/National Military Strategy and that a materiel solution is necessary. Additionally, he determines whether or not program funding to support an acquisition has been addressed in the PPBS.

Outcomes from the Requirements Generation Process. The requirements generation process, as described above, should result in a cultural change wherein all of the multi-functional team members contribute to the process cooperatively and simultaneously. The study team coordinates and blends the perspectives of all the functional participants. Team members are empowered to fully participate in the requirements generation process, freely expressing their views, and making decisions or recommendations within their areas of expertise. Fully integrated, multi-functional teams achieve improved efficiency and effectiveness over other processes. It has been found that front-end effort contributes to a better product and lower cost.

Reorganization of Test Management

Recommendation:

The National Acquisition Strategy Team recommends that the Government of Poland reorganize the management of military systems testing.

Testing is currently the responsibility of the MoND and the National Standards Organization. Both participants exercise their responsibility separately, adding unnecessary R&D time and cost.

As system acquisition management transitions to a Program Management structure, there is an opportunity for improved testing efficiency. Making the Program Manager responsible for test planning will permit coordinated testing ***but separate, independent evaluation***. That is, the Program Manager along with the various testers and other interested participants form an integrated test team that plans for integrated testing in the most efficient manner. The integrated test team agrees on the test regimen that will meet test requirements and fit within budgetary limitations. Then, as the testing is conducted by independent test activities, independent evaluations are accomplished as required by the legal and regulatory mandates.

Organizational Changes. The Program Management Office assigns a staff officer to coordinate test activities. This may be part time or full time, depending on the amount of testing planned or ongoing. Most of the work will continue to be performed by the various functional organizations that currently perform testing, but efficiencies should result through reductions in the total amount of testing.

Process Changes. Coordinated test planning activities for a specific developmental program are accomplished by participating organizations, working together. This coordination requires the expenditure of planning time but achieves significant efficiencies in testing if the participants work cooperatively.

Benefits. One person—the Program Manager—is responsible for test planning. This allows the PM to use testing as a risk reduction tool aimed at finding and fixing weapon system deficiencies. The independent evaluators still provide their independent views regarding the new weapon system, as mandated; however, coordinated testing costs less than the totally independent testing presently done.

Barriers to Change. Because the total amount of testing is reduced, the various test activities may argue that this is a poor idea. It is expected that the arguments will be based on the possibility of improper test influence. This argument is not valid if independently conducted testing is done rigorously.

Resource Allocation and Financial Management

Recommendation:

The National Acquisition Strategy team recommends that the Ministry of National Defence establish a Planning, Programming, and Budgeting System (PPBS) to assist in making choices about the allocation of resources among competing or possible programs and alternatives to accomplish the specific objectives of national defence. The ultimate goal is to provide the best mix of forces, equipment and support attainable within fiscal constraints.

Overview

PPBS can be summarized in a few words. Based on the anticipated threat, a strategy is developed. The requirements of that strategy are then estimated and programs are developed to package and execute the strategy. Finally, a budget is developed to pay for the programs.

PPBS, itself, operates on a continuous basis; each of the three functions of the system (planning, programming and budgeting) operates on a near-continuous basis, although not simultaneously in the same fiscal year. The process moves from broad planning considerations to more definitive program objectives to specific budget estimates that

price out the programs. PPBS differs from a traditional budgeting process in two significant ways. First, PPBS tends to focus less on the existing base and annual incremental improvements to it. Instead, its focus is more on objectives and purposes and the long-term alternatives to achieve them. As a result of this emphasis, planning has been elevated to a level equal to budgetary management and control. Secondly, PPBS brings together planning and budgeting by means of programming, a process which essentially defines a procedure for distributing available resources among the many competing or possible programs.

Planning

The "global" threat is assessed and a strategy to meet that threat is defined.

The first phase of PPBS would begin with a review of the state of Polish national security objectives, consideration of broad strategies for dealing with the threats to national security, an assessment of current capabilities, and development of force structures and levels that will support those strategies. Development of defense-wide policies and guidance with respect to manpower, logistics, acquisition, and other functional areas follow those steps. The planning horizon must encompass a sufficient period of time to ensure consistency (approximately 8-10 years). The detail must be sufficient to identify both long and short-range security objectives.

Programming

Strategic plans are translated into programs defined in terms of forces, manpower, and funding requirements.

In the programming phase, the broad strategic plan is translated into a financial plan of effective and achievable packages. The specific requirements for each of the services to accomplish the national strategy are identified in this phase, as well as an assessment of current capabilities. The overall purpose is to assign funding resources to programs in order to achieve the best mix of forces possible within fiscal constraints. Because it is more detailed and resource dependent, the programming phase covers a shorter period of time than the planning phase (approximately 5-7 years).

Budgeting

Programs are expressed in terms of specific funding requirements tied to an annual budget.

Budgeting is the final phase in the PPBS cycle. The budget expresses the financial requirements necessary to support approved programs that were developed during the preceding phases of planning and programming. It is through the budget that planning and programming are translated into annual budget requirements. A key difference between programming and budgeting is the level of precision and accuracy associated with resource estimates. During the programming phase, many different program

alternatives are considered and a high level of precision in estimates is not required. However, once program decisions are made, more precise budget estimates are required to ensure the executability of the budget. The budgeting phase provides decision-makers with the final opportunity to refine estimates to reflect the most accurate and up-to-date data available, which comes from the organizations responsible for executing the budget.

Acquisition and Contract Management

Recommendation:

The National Acquisition Strategy Team recommends that the Ministry of National Defence establish "Contracting Officer" positions and associated career paths, education, training and certification programs.

Background

During our interviews with MoND officials, it was noted that Poland does not have a designated "Contracting Officer" position, training or career path. Once a requirement is identified, it is assigned to a procuring activity. The head of that activity is responsible for the "execution" of that procurement and, depending upon the anticipated contract value, may be delegated responsibility for signing the ensuing contract. Day to day management for the procurement is usually delegated to a junior or mid-grade official depending upon the value and complexity of the procurement. This individual usually has an advanced technical degree but typically does not have any significant business experience, education or training. If the procurement is complex, the leader of the procurement may call in experts from other functional fields to provide technical, financial, legal and operational expertise. By their own admission, these procurement leaders and teams are typically assigned on an *ad hoc* basis. As a result, procuring organizations may lose valuable corporate knowledge and team synergy when these teams are disbanded. Additionally, the lack of formal contracting and business training for procurement team leaders, coupled with the lack of documented procurement processes/procedures, may adversely impact acquisition efficiency and effectiveness.

Vision

The vision for Poland's National Acquisition System is to maximize available resources and deliver on a timely basis the best value product or service to the customer. At the same time, the acquisition system should contain safeguards that maintain the public's trust and support public policy objectives. Contracting personnel and associated laws, regulations and processes have a tremendous potential impact on a nation's ability to successfully equip, modernize and support its military forces. Therefore, it is critical that agency leaders select contracting personnel carefully and, more importantly, provide those individuals with the necessary support, training and tools to accomplish their mission. The following paragraphs provide a brief overview of recommended contracting processes and controls as they relate to: (1) Contracting Authority, (2)

Contracting Officer Authority, (3) Contracting Officer Responsibility, (4) Contracting Officer Appointment, and (5) Contracting Officer Selection. Specific Contracting Officer education, training and certification recommendations will be addressed in the section titled "Improvements in Acquisition Education."

Contracting Authority

Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services should be vested in the head (leader) of an agency. As necessary, the agency head should be given the authority to establish contracting activities to support its mission and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. (The "Head of the contracting activity" is typically the official who has overall responsibility for managing the contracting activity).

Contracts should be entered into and signed on behalf of the government only by duly appointed contracting officers acting within the authority granted by law and their respective agency. In some smaller agencies, it may be desirable to designate a relatively small number of high-level officials as contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity should be selected and appointed in writing.

To facilitate the efficient use of resources, agency heads should be given the authority to mutually agree to assign contracting functions and responsibilities from one agency to another and/or create joint or combined offices to exercise acquisition functions and responsibilities.

Contracting Officer Authority

Contracting officers should have the authority to enter into, administer, or terminate contracts and make related determinations and findings. "Determinations and findings" refers to a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. A "determination" is a conclusion or decision supported by "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

Contracting officers may bind the government only to the extent of the authority delegated to them. Contracting officers should receive from the appointing authority clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority should be readily available to the public and agency personnel.

No contract should be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

Contracting Officer Responsibilities

Contracting officers should be responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the government in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment. Contracting officers should:

1. Ensure that they operate within their authorized authority;

2. Ensure that sufficient funds are available for obligation;

3. Ensure that contractors receive impartial, fair, and equitable treatment; and

4. Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

Contracting Officer Appointment

Agency heads should establish and maintain a procurement career management program and a system for the selection, appointment and termination of appointment of contracting officers. Agency heads or their designees should be able to select and appoint contracting officers and terminate their appointments. These selections and appointments should be consistent with standards for skill-based training in performing contracting and purchasing duties.

Contracting officers should be appointed in writing and provided a Certificate of Appointment, which should state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials should maintain files containing copies of all appointments that have not been terminated.

Termination of a contracting officer appointment should be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination should operate retroactively.

Contracting Officer Selection

In selecting contracting officers, the appointing official should consider the complexity and monetary value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include:

1. Experience in government contracting and administration, commercial purchasing, or related fields;

2. Education or special training in business administration, law, accounting, engineering, or related fields;

3. Knowledge of acquisition policies, procedures, laws and regulations;

4. Specialized knowledge in the particular assigned field of contracting; and

5. Satisfactory completion of acquisition training courses.

Recommendation:

The National Acquisition Strategy Team recommends that the Ministry of National Defence spearhead efforts to shift the country's current acquisition system (and laws) from a risk avoidance to a risk management based system. Specifically, procurement laws, regulations and processes need to be changed to permit more system flexibility, innovation and empowerment of acquisition team members.

Recommendation:

The National Acquisition Strategy Team recommends that the Ministry of National Defence establish a "Procurement Management Review" to increase insight into acquisition activities and explore opportunities for system improvement.

Recommendation:

The National Acquisition Strategy Team recommends that the Ministry of National Defence integrate Contract Administration activities and establish a contract administration feedback mechanism to enhance overall acquisition system efficiency and effectiveness.

Recommendation:

The National Acquisition Strategy Team recommends that the Ministry of National Defence establish an internal "Pricing/Cost Estimating" function to support contracting, program management and resource allocation decisions.

Background

Many respondents from the Office of Public Procurement and Ministry of National Defence believed that the Act on Public Procurement provided definitive "guidance" on how to conduct an acquisition. This common viewpoint fails to recognize that there could be multiple acceptable approaches to satisfying a requirement. Competing contracting

strategies could all be acceptable from a legal and business standpoint, but could have vastly different strengths and weaknesses. Conversely, a competing strategy could be legal in accordance with the Public Procurement Act, but could be a blatantly unethical or borderline ethical business approach. Blind adherence to the Act in these cases could undermine the integrity of the acquisition process and could adversely impact crucial business relationships.

Although the Act is extremely detailed, it does not cover every potential circumstance that could confront a contracting official. Nor does it provide detailed guidance on how to implement and manage procurement, resourcing and business decisions. The strict interpretation and enforcement of the Public Procurement Act limits the use of potentially sound business strategies, promotes unhealthy risk aversion, hinders flexibility, increases cycle time, and stifles innovation and process improvement.

The acquisition of major weapon systems is a complex undertaking, often requiring the integration of numerous functional specialists. One of the key tenets of our recommended National Acquisition Strategy involves the use of ***empowered individuals and teams*** to accomplish the acquisition mission. The Acquisition Team consists of all participants in government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.

Empowerment of Acquisition Personnel

The role of each member of the Acquisition Team should be to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. Empowerment is a relatively easy concept to grasp, but extremely difficult to implement due to human nature and organizational culture. Acquisition leaders should support prudent risk taking and avoid "punishing" those who attempt seemingly sound business approaches, but fail. Also, it is extremely important that acquisition related laws and regulations provide sufficient implementation flexibility for contracting officers and others involved in the acquisition process. For instance, if a specific strategy, practice, policy or procedure is in the best interests of the Polish government and is not addressed in agency regulations nor prohibited by law (statute or case law), that strategy, practice, policy or procedure should be construed as a permissible exercise of authority. The contracting official should not have to wait until the current Act on Public Procurement Policy is changed or amended to permit use of the desired strategy. The Act should be amended to foster flexibility, innovation and prudent risk taking. Toward this end, the Polish National Acquisition System (and associated laws, regulations and policies) should strive to achieve the following ***guiding principles***:

1. All participants in the System should be responsible for making acquisition decisions that deliver the best value product or service to the customer. Best value must be viewed from a broad perspective and is achieved by balancing the many competing interests in the System. The result is a system that works better and costs less.

2. The System must be responsive and adaptive to customer needs, concerns, and feedback. Implementation of acquisition policies and procedures, as well as consideration of timeliness, quality, and cost throughout the process, must take into account the perspective of the user of the product or service.

3. The System must perform in a timely, high quality, and cost-effective manner.

4. All members of the Team are required to employ planning as an integral part of the overall process of acquiring products or services. Although advance planning is required, each member of the Team must be flexible in order to accommodate changing or unforeseen mission needs. Planning is a tool for accomplishing tasks, and its disciplined application should be commensurate with the size and nature of a given task.

5. In order to ensure that maximum efficiency is obtained, rules, regulations, and policies should be promulgated only when their benefits clearly exceed the costs of their development, implementation, administration, and enforcement. This applies to internal administrative processes, including reviews, and to rules and procedures applied to the contractor community.

6. The System must provide uniformity where it contributes to efficiency or where fairness and predictability are essential. The System should also, however, encourage innovation and local adaptation where uniformity is not essential.

7. An essential consideration in every aspect of the System is maintaining the public's trust. Not only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness. The foundation of integrity within the System is a competent, experienced, and well-trained, professional workforce. Accordingly, each member of the Team is responsible and accountable for the wise use of public resources as well as acting in a manner that maintains the public's trust. Fairness and openness require open communication among team members, internal and external customers, and the public.

8. To achieve efficient operations, the System must shift its focus from "risk avoidance" to one of "risk management." The cost to the taxpayer of attempting to eliminate all risk is prohibitive. The government should accept and manage the risk associated with empowering local procurement officials to take independent action based on their professional judgment and recognize that not all innovation will be successful.

9. The government should exercise discretion, use sound business judgment, and comply with applicable laws and regulations in dealing with contractors and

prospective contractors. All contractors and prospective contractors should be treated fairly and impartially but need not be treated the same.

The purpose of defining the "Acquisition Team" (Team) in the above ***guiding principles*** is to ensure that participants in the System are identified -- beginning with the customer and ending with the contractor for the product or service. By identifying the team members in this manner, teamwork, unity of purpose, and open communication among the members of the Team in sharing the vision and achieving the goal of the System are encouraged. Individual team members will participate in the acquisition process at the appropriate time.

Role of the (Empowered) Acquisition Team

The following principles should be adopted when defining the various roles and responsibilities of the Acquisition Team members within the Polish National Acquisition System.

1. Government members of the Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the System's ***guiding principles***. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

2. The authority to make decisions and the accountability for the decisions made should be delegated to the lowest level within the System, consistent with law.

3. The Team must be prepared to perform the functions and duties assigned. The government should be committed to provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member. The contractor community should be encouraged to do likewise.

4. The System should foster cooperative relationships between the government and its contractors consistent with its overriding responsibility to get the best value for the taxpayers.

5. The Act on Public Procurement Policy outlines procurement policies and procedures that are used by members of the Acquisition Team. If a policy procedure, strategy or practice is in the best interest of the government and is not specifically addressed in the Act, nor prohibited by law (statute or case law), or other regulation, government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is

otherwise consistent with law and within the limits of their authority. Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

Recommendation:

The National Acquisition Strategy Team recommends that the Ministry of National Defense vigorously pursue simplification and streamlining of the Public Procurement Act and any other procurement laws that now limit the exercise of judgment by contracting officials, and hence limit their ability to acquire best value in contracting for goods and services. The detailed requirements of the present statute should be republished as guidance in a separate set of regulations.

Background

As noted in several contexts throughout the report, the Public Procurement Act is extremely detailed, and is both prescriptive and proscriptive. It covers not only virtually every action which the contracting officials are to take, but it is interpreted to preclude them from making decisions or judgments about any facet of a procurement which is not directly addressed in the law. Rewriting the law to be a set of basic principles, and providing for detailed procedures to be issued in regulations implementing these principles, is the first step (and a very important one) in empowering the acquisition workforce.

Suggested content of a simplified Public Procurement Act

1. The substance of the current Chapter l, which includes definitions, statements of applicability and exclusions.

2. The basic principles now enumerated in Chapter 3, which includes the range of tendering procedures, requirements for public notice, requirement for equal treatment of all offerors, and requirements with respect to qualification of contractors. However, details such as thresholds for unlimited tendering, actions that would disqualify a prospective contractor, the criteria for a qualified contractor, and the procedures for handling bids, would be best left to regulations which the law should authorize to be issued by the Director of Public Procurement in coordination with the Ministry of National Defense.

3. Any special considerations or national policies, such as Buy Poland, or ensure fair treatment of small businesses, etc.

4. A provision for protests and appeals, but without the detailed procedures now contained in Chapter 8. These should be in regulations authorized by the law to be issued as noted above.

5. A requirement for checks and balances and reasonable oversight of the process, including the regulations to ensure that they are modified as necessary to meet changing conditions.

Most if not all the detailed procedures with respect to the various methods of tendering which are contained in Chapters 4-7 of the current Act would be more appropriately included in regulations. The principles enumerated above in connection with the discussion of empowerment, and the role of the empowered acquisition team, are equally important in establishing the statutory basis for acquisition and crafting implementing regulations.

Attached in Appendix C are several extracts from the Defense Acquisition Deskbook which illustrate how detailed procedures are promulgated in regulations rather than in statute. For example, the coverage of requirements for competition in Part 6 of the Federal Acquisition Regulation is similar to the tendering requirements in Poland's Public Procurement Act. However, additional guidance can be added to the regulatory implementation that enhances the contract specialist's ability to make judgments as to the best course of action. The extracts from Part 15 of the Federal Acquisition Regulation go into greater detail and provide more guidance on negotiated procurements. These are generally the larger and more complex procurements, which require many judgments and trade-offs between price and other evaluation factors, so this is one of the more critical areas for regulatory coverage. In the past, most major system procurements were priced on the basis of costs – either costs estimated to be incurred or cost experience on a previous purchase. However, as more commercial components are used in defense systems, the whole process of evaluating technical features and determining best value becomes more complicated and requires greater knowledge of the marketplace. The contracting officer can no longer rely on the opportunity to review a prospective contractor's actual costs, but must be able to determine the fairness and reasonableness of the prices for commercial components based on marketplace competition.

As the Polish Ministry of National Defence moves toward privatization of its defence manufacturing capability, it is reasonable to assume that there will be greater competition among potential suppliers to fill defence needs. Much of the guidance and procedures governing negotiated procurement should prove very useful under those circumstances. Clearly, such guidance, as well as most of what is now contained in Chapters 4-7 of the Public Procurement Act, should be in regulations that can be modified as necessary without having to go back to Parliament. The procurement regulatory system in the US is updated several times a year through the use of Federal Acquisition Circulars that modify the Federal Acquisition Regulation. Subsidiary regulations are then modified as well if necessary. Two Federal Acquisition Circulars (FACs) are included in Appendix C to illustrate how regulatory changes are originated, developed, and made a part of the Regulation.

Improvements in Acquisition Education

Recommendation:

The National Acquisition Strategy Team recommends that the Ministry of National Defence establish an acquisition education and training program, including program management and contracting as the centerpieces.

Overview

As acquisition becomes more complex and important in carrying out Poland's military modernization and integration into NATO, the roles of acquisition managers become increasingly critical. In addition to having strong technical backgrounds, they will need business and leadership skills to successfully manage major acquisition programs. A model acquisition system ought to include a more responsible role for procurement personnel than they have generally exercised in the past. An empowered system calls for more informed judgments about what is available in the global marketplace and about opportunities for competition. It calls for earlier participation by procurement personnel, as the government's business managers, in the development of acquisition strategies. Further, it calls for reducing the micromanagement in existing laws and permitting broader latitude for judgment, while holding acquisition managers accountable for the results of decisions within their control. (Ref. 33)

Education and training in the acquisition specialties should encompass all the functional areas that participate in the acquisition process. Program management, contracting, systems engineering, manufacturing and quality assurance, logistics, financial management and testing are a few of the functional areas. A more complete list, taken from the US DoD system, is enclosed in Appendix C. Specialists from each functional area need to have knowledge and experience in their functional area but also have a general knowledge of acquisition—specifically in the areas of program management, contracting, financial management, and integrated product and process development. Basic instruction in these areas should be embedded in the education and training plan for each functional specialty.

A. Comprehensive Education Support System

To support the early conversion to a program managed acquisition system, a comprehensive education (and training) support system is recommended. Such a system would be comprised of three principal phases:

I. Initial education phase
II. Advanced education and training phase
III. Senior education and training phase

The initial education phase would consist of civilian undergraduate business educational institutions from which both junior military officers and civilians would be recruited.

Baccalaureate programs such as that at the University of Warsaw are quite capable of supplying finance, budget, management and contract personnel for the Ministry of National Defence personnel pool. After recruitment, specialized training in military acquisition management could be developed within the MoND education structure. The Military University of Technology (MUT) seems an appropriate institution to consolidate training for Phase I as well as II and III. It already has much of the faculty expertise needed to establish a Defense Acquisition Training Institute capable of conducting specialized training for initial entry personnel and more advanced professional development for mid-career personnel.

Phase II would consist of graduate level education programs, primarily at the master's degree level. This phase can be supported by Polish institutions of higher education and by external civilian and military schools, such as the Naval Postgraduate School (NPS), business schools and civilian universities. Advanced professional training to support mid-career professional development already exists at several US military institutions, e.g., NPS, and the Defense Acquisition University and can be developed at MUT as previously mentioned in reference to Phase I training support for contract officers. During the transition period, training, development of certification requirements, etc., can be supported by augmenting the MUT faculty with the appropriate skills.

Additionally, Phase II educational opportunities should be supplemented by a certification program. Training, education and experience would be tested by a certification examination. The examination would set standards for time on the job and other qualifications, e.g., Level I – two years acquisition experience, baccalaureate in business, finance or related field; Level II -- five years experience, advanced training program; Level III – ten years experience, master's degree level education in related field.

Each of these levels for acquisitions professionals would be supported by defining specific academic programs and/or training courses that would meet the requirements set for specialty or sub-specialty areas, e.g., program management, contracting, systems engineering, finance and budgeting. Here it would be necessary to establish both an education coordinator who would certify external education and training facilities as meeting the MoND stated requirements, and an examination/certification board that prepares, reviews and administers the exams at each successive level. This process may be incorporated into existing certification functions at the Military University of Technology (MUT), building upon its expertise in the appropriate subject areas.

Phase III education supports the requirement for senior leadership in the MoND acquisition system. Here we should look to educational support and training programs that support both the integration of knowledge of the various acquisition subspecialties, the process of military acquisition as national strategic resource management and a complete understanding of the military planning process. Education at senior service academies and experience in key positions should be a prerequisite for those selected for senior leadership positions. Additional post-graduate level education might be developed to address resource management and economics subjects. An executive education

institute could be established at MUT to support this recommendation. Alternatively, MUT and the University of Warsaw may wish to establish a joint program where a broad based military-civilian education partnership would draw upon expertise and experience from both sectors to assist senior managers in improving their decision- making skills.

Everyone involved in the acquisition process should receive education and ongoing training in ethics and fraud detection. Ethical conduct is crucial to maintaining the public trust and confidence in the government's acquisition system. Accordingly, these concepts should be incorporated in all public sector certification, training and education systems.

B. Program Management Education

The establishment of an education and training program is multifaceted. First, there must be a core of personnel with the necessary education and training to initiate the educational program. A solid approach would be to educate an initial core in project management at the Naval Postgraduate School in Monterey, California. These individuals would, upon their return to Poland, establish a program management education curriculum. A complement of acquisition-trained personnel would eventually result, most of them receiving the necessary instruction in Poland.

Second, a short course of about two weeks could be provided in Poland by faculty of the Naval Postgraduate School (later by MUT) for any personnel assigned to a program management team. Such a course would introduce personnel to the basic principles of program management.

Third, any personnel designated to be a program manager or deputy program manager must receive instruction prior to assuming the new position.

Fourth, principles of program management would need to be embedded in functional curricula for acquisition personnel involved in project management. For example, specialists in systems engineering, logistics, manufacturing management, quality assurance, testing, contracting and cost accounting should receive instruction in the principles of program management, to include integrated product and process development.

C. Financial Management Education

The Financial Management education program should be offered at both the graduate and postgraduate levels. In addition to management fundamentals, the program of instruction should include such topics as funds management, internal control and auditing, cost management and analysis, concepts of economy, efficiency and effectiveness and strategic planning and control. It is also important that financial managers be cognizant of the acquisition management process in which they will be asked to participate. They should understand the acquisition process and the application of project management methods within the process. Cost benefit analysis, systems analysis and cost estimation

are critical skills for the financial manager. They are used for solving complex and unstructured management problems in which alternatives must be identified, evaluated and selected to assure the most efficient utilization and economic procurement of resources, and the effective accomplishment of MoND goals and objectives.

D. Logistics Education

The acquisition logistics educational structure should be technically oriented, and taught at the graduate or postgraduate level. The program of instruction ought to include integrating studies, such as program management, contracting principles, systems engineering and integrated product and process development. Good logistics planners become better and more useful to a warfighting program insofar as they understand the broad range of acquisition functional specialties involved in the development.

Privatization

Recommendation:

The National Acquisition Strategy Team recommends privatization to the maximum extent practicable the government factories that currently supply the majority of defence needs.

There appears to be a general acknowledgement that the government needs to privatize most if not all the factories that currently supply the majority of defence needs. They are admittedly not as efficient as private enterprise, and the products they supply are therefore more costly. There is no incentive for them to become more efficient so long as they do not have to compete for business. The efficiencies of privatization, enabling the government to acquire significantly more products within its current defence budget, should be a strong incentive to privatize as soon as possible. Studies and analyses in the following areas are needed to facilitate future decisions on privatization of defence plants:

1. Are private sector enterprises now competing with government factories to fill defence needs? Are the savings from such competitions measurable when contracts are awarded to private sector companies?
2. Are any of the government facilities engaged in research or manufacture that cannot be performed in the private sector? Some of the considerations that might warrant the use of government facilities could be security of highly classified research, or significant investment in facilities that cannot be recouped because of low quantity production requirements.
3. Are there any critical skills and/or core capabilities that the government needs to maintain and protect in its plants, research facilities, maintenance depots, etc. because such skills and capabilities are either not available or cannot be relied on to be available in the private sector in time of need?
4. Are there private sector manufacturers, investors, entrepreneurs, etc., available to aid in privatization of government factories and other facilities?

5. Are there alternative uses for any of the government-owned factories, or is conversion to commercial uses a feasible consideration?
6. Develop a plan and timetable for conversion of government factories to private sector operation.

III. The Acquisition System in Poland

Baseline Organization and Processes

1. The Current Structure of Political Power in Poland

A. The Political Framework

Poland adopted a new constitution in 1997, modifying a structure of political power that has become dramatically more democratic since the first post-WWII free elections were held in 1989. According to this constitution, Poland is a unitary state and a parliamentary democracy. Power exercised by the legislative, executive and judicial branches is to be balanced and separated. Legislative authority belongs to Parliament, composed of a Sejm, or lower chamber, and a Senate, or upper chamber. Parliamentarians are elected, in accordance with a detailed set of rules. Most of the deputies in the Sejm are elected by proportional representation from multi-seat constituencies. The remainder are elected, again by proportional representation, from national constituencies among the political parties that won at least seven percent of the vote. Executive power is vested in a popularly elected President and the Council of Ministers, headed by a Prime Minister nominated by the President and approved by the Sejm. Courts and tribunals exercise judicial power. (Ref. 7)

Political parties are critical to the functioning of the new constitutional order in Poland. It is premature to gauge the patterns according to which the parties will aggregate interests, including those associated with national defence, and gain support for their views sufficient to win and retain office for extended periods of time. Nor is it evident where the defence interests of the most successful parties converge, except in general support for the institution of the Polish military and its affiliation with NATO. The landscape of political parties in Poland has changed significantly and continuously since 1989. As of May of 2000, there were over 200 parties, though a half dozen tend to dominate in parliamentary elections, and hence figure prominently in the coalition governments that have been characteristic of contemporary Polish politics. (Ref. 15) Nine parties are represented in the Sejm as of June 2000 (Ref. 24). No single party has been able to win control of Parliament in successive elections. In terms of ideological developments, parliamentary power has been transferred via the ballot box from relatively conservative to relatively liberal coalitions and back again over the course of a series of elections since 1989.

The picture on the executive branch side of Polish government is, not surprisingly, similar. Poland has had two presidents since 1989, Lech Walesa and Aleksander Kwasniewski. Walesa, president from 1990 until 1995, came from the Solidarity Party, once the most powerful labor union in the country. The current president, Mr. Kwasniewski, is a former communist minister. Both presidents have experienced difficulty with the prime ministers they have nominated and the coalition governments these prime ministers have led. Elections for Parliament, unless triggered earlier, will take place in September of 2001.

Elected officials in Poland must work within relatively new governmental structures and a challenging array of political, economic and social problems. Thus it is not surprising to discover a significant degree of uncertainty, if not electoral instability, in Polish

politics. That observation applies across the policy spectrum, including national defence, and, therefore, acquisition. In this environment, it is quite difficult to develop and sustain comprehensive policy initiatives. That said, it is noted that the transfers of power in Poland, though frequent by comparison with much older democracies, continue to be lawful and peaceful. Democracy in Poland is clearly a success at the level of popular commitment, rule of law and regime change. The problem, as noted, lies in working through or modifying further the structures of government and the alignment of parties to facilitate long-term policy development and implementation.

B. The Economic Framework

The economy of Poland is responding reasonably well to the transformation begun ten years ago. At that time, significant changes were made, including ending price controls, cutting subsidies and reducing barriers to imports. The GDP initially faltered, but has since recovered, showing positive growth each year since 1992 (Ref. 24). Between 1992 and 1999, GDP growth averaged nearly 5 percent (Refs. 24 and 25). The emerging private sector, now well over half of Poland's GDP, is the engine for this growth. In 1999, the GDP of Poland was 611,576 MPLN, reflecting growth of 4.1 percent. Inflation was 7.3 percent, while unemployment was 13 percent (Ref. 24).

The Organization for Economic Cooperation and Development (OECD) extended membership to Poland in 1996, signaling confidence in Poland's adaptation to international rules on finance and trade. EU membership is, however, proving more difficult. The government hopes to resolve the many issues associated with membership in the EU by 2003. At the heart of the transformation of the Polish economy and its further integration into European and world markets is the effort to complete privatization. The government plans to transfer ownership of government-owned plants to private entities, but must resolve many issues before this can be fully accomplished. More than a third of the employees working for defence companies would be retired early or would require retraining according to this plan (Ref. 14). Within Defence, privatization must be linked to the National Military Strategy and a national acquisition strategy. Plans for privatizing defence activities are addressed in two documents: The first, Restructuring and Privatization of the Defence Industry, provides a blueprint for state-owned, partially privatized, and wholly privatized companies. The second document is the Offset Law.

Poland is experiencing difficulty achieving a balanced budget. Putting aside the costs associated with privatization, the Ministry of Finance is attempting to eliminate the deficit by 2003. As of 1999, the deficit was 2 percent of GDP, and it is expected to grow slightly in 2000 (Ref. 24). Increases in spending to achieve NATO force goals, as with other commitments for new or expanded governmental programs, will continue to conflict with this objective. Besides defence, other major drivers on the spending side of the Polish budget include social security, internal security, education and transportation (Ref. 8).

When NATO membership was extended to Poland in 1997, it was observed in the Protocols to the treaty providing for that membership that "Poland has the most significant military resources in Central Europe, . . . and now spends 2.27 percent of its Gross Domestic Product on defense." (Ref. 30) That figure is slightly greater than the average of 2.2 and 2.1 percent in 1997 and 1998, respectively, for European NATO countries (Ref. 25). However, Poland undertook no specific commitment with respect to defence spending when it became a member of NATO. Rather, there was an understanding that membership in NATO "requires a commitment to assume the requisite financial responsibilities." (Ref. 29) It was also agreed that Poland's contribution to NATO's common budget would be 2.48 percent (Ref. 32).

When the government of Poland accepted these responsibilities, it was assumed by Allied Heads of State and Government that the costs they would generate were "manageable, and that the resources necessary to meet those costs will be provided in accordance with established procedures under which each Ally bears its fair share." (Ref. 29) President Kwasniewski has stated that concrete measures would be taken to meet all targets set "in connection with NATO membership." (Ref. 31) To further that end, the President said that Poland's armed forces would be fundamentally transformed, "in step with the 15-year modernization programme now being drafted by the government." (Ref. 29) Within this programme was to be "a defence budget estimate for the first five years in which the programme will be operative, as well as a general forecast of military expenditure in the following decade." (Ref. 29)

As a share of the growing Polish economy, spending for defence over the period 1989-1997 has ranged from 1.8 percent to 2.7 percent of GDP. (See box below) The average for this period is 2.3 percent (Ref. 26). While defence spending as a share of the Polish economy has been relatively stable, measured in constant currency it declined from 1989 to 1997 (Ref. 26).

Defence Spending as a Percentage of GDP in Poland

1989	1990	1991	1992	1993	1994	1995	1996	1997
1.8	2.7	2.3	2.3	2.6	2.4	2.3	2.3	2.3

2. Acquisition and the Defence Budget Process

A. Governmental Structure and Budget Process

Before examining the process of developing defence budgets for approval by the Council of Ministers and Parliament, we should understand the basics of government in Poland and how it addresses budgets in general. We begin by clarifying the use of the word government, which means something different in the Polish political context from what it means to those familiar with presidential political systems. Unless it is used in the more general sense to refer to all of the institutions of governance at the national level, the term government in this report refers to the cabinet or the Council of Ministers. The role of the government or cabinet in budgeting in general and defence budgeting in particular is addressed below.

As a hybrid of a parliamentary system of government, the Polish system features a distinct blending of legislative and executive power. This is evident in the office of the President, who is popularly elected every five years. The President is also the Supreme Commander of the Armed Forces of Poland. In exercising his authority under the constitution, the President can issue Official Acts that must be signed by the Prime Minister.

For purposes of exercising control over the armed forces, the President, as commander-in-chief, chairs a National Defence Committee. Deputy Chairmen are the Prime Minister and the Minister of National Defence. The Committee is comprised of the Presidents of the Sejm and the Senate, the Ministers of Foreign Affairs, Internal Affairs, and Finance and the Chief of the General Staff (Ref. 16).

The President shares general executive power with the Prime Minister and Council of Ministers. The President nominates the Prime Minister (PM) who, in turn, proposes a government, or Council of Ministers. Once this government has been named, the President formally appoints the PM and the rest of the Council of Ministers. The government is then approved by the Sejm. If the President has not named a PM or the appointed government has not been able to win approval, the Sejm may select a PM and Council of Ministers and the President must accept them. If neither of these procedures results in a government approved by the Sejm, the President may appoint a PM and his Council of Ministers and submit them to a vote of confidence in the Sejm. If that vote fails, the President calls for elections to form a new Sejm. Once in office, the Prime Minister, in directing branches of the Polish government, issues policy documents.

The Council of Ministers conducts executive matters by ensuring that laws are implemented and, notably, by drafting the State Budget and supervising its implementation. The Council also exercises "general control in the field of national defence" (Ref. 7). The Council is comprised of the PM, who acts as its President, and the ministers. Deputy Prime Ministers and presidents of committees specified in statutes may also serve on the Council. Ministers direct their branches of government under the

leadership of the PM, performing their work by issuing regulations. Members of the Council are collectively responsible to the Sejm for the activities of the Council and may be individually responsible to that body for matters within their competence. The composition of the Council may be changed by the President upon the request of the PM. It may also be changed should the Sejm vote no confidence in an individual minister.

This structure for the exercise of executive power is intended to ensure that power is both limited and coordinated in its employment. In combination with a very fragmented and evolving political party system, this structure puts a premium upon the leadership and management skills of both executives and legislators. This is particularly the case where long-term planning (including identification of resources) for major government programs is concerned. The process of passing budgets illustrates this problem and is central to acquisition policy reform.

In general, budget development begins within the executive branch, moves to the legislative branch, and after approval there, returns to the executive branch for final approval and execution.

Figure 1

Defence Budgeting in Poland:

General Overview

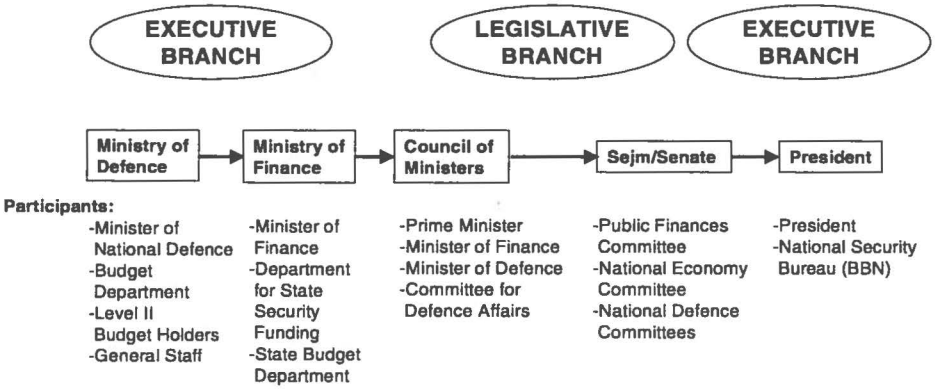


Figure 1 is intended to capture the flow of budget events across these institutions of government, using the defence budget as an example. It suggests that the Ministry of National Defence (MoND) begins the process by submitting a defence budget proposal to the Council of Ministers for approval. Once the Council has made its adjustments, this budget, as part of the overall State Budget, will be given to the Parliament for consideration and approval. Following parliamentary approval, which, of course, includes the possibility of further adjustment, the State Budget is submitted to the

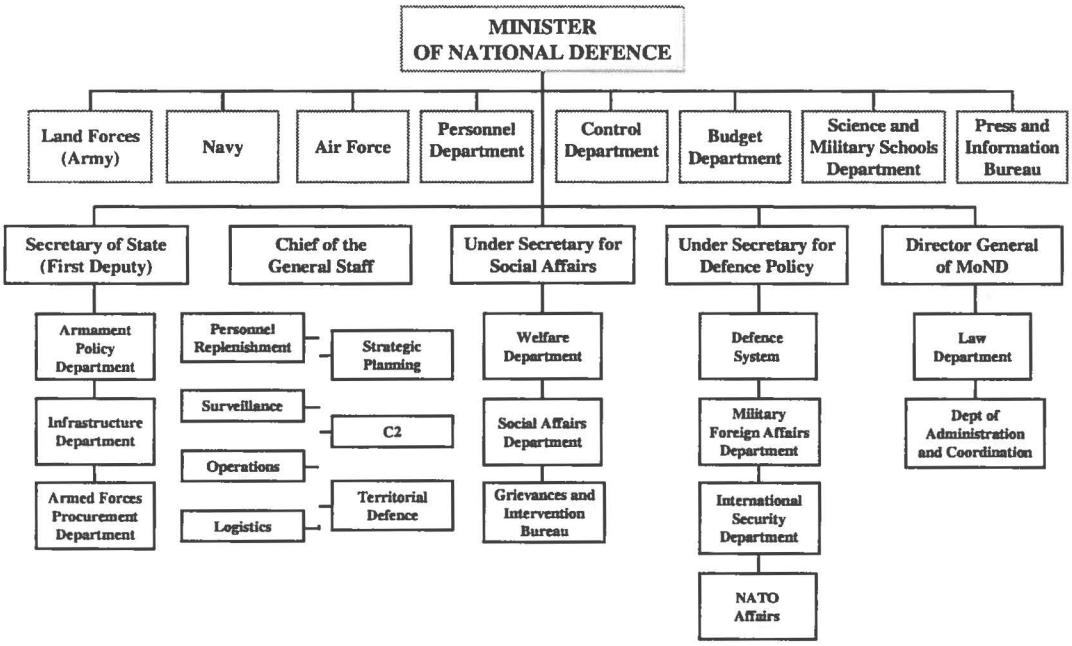
President for final approval and execution. Each of these steps will be discussed in further detail below.

B. Development of the Defence Budget within the Ministry of Defence

We begin by noting the organization of the Ministry of National Defence, captured in Figure 2 below. Within the MoND, the most important players in the annual process of developing defence budgets are the Minister of National Defence, the Budget Department, the General Staff and the Level II Budget Holders. These offices are organized as a MoND Budget Committee, chaired by the Minister of National Defence and supported by the three Permanent Subcommittees. Because the Permanent Subcommittees and the Level II Budget Holders are neither self-evident nor identified in the MoND organization chart (Fig. 2), a word on their composition is in order before beginning the discussion of the budget process within MoND.

Figure 2

Government of Poland
Ministry of National Defence



The Minister of National Defence is the main Budget Holder for the budget of the Ministry of National Defence in Poland. Level II Budget Holders are the commanders of the three services, i.e., the Land Forces (Army), the Air Forces and the Navy, commanders of designated units and heads of the departments that report directly to the Minister of National Defence. Level III Budget Holders are commanders of units that

report directly to Level II Budget Holders. (Ref. 4) Budget Holders, supported by chief accountants, are responsible for the funds they receive and for executing contracts.

The Permanent Subcommittees focus on three separate matters. These subjects and the composition of the subcommittees are as follows:

1. Permanent Subcommittee on R&D and implementation, armament, military equipment and spare parts procurement and maintenance.

   Chair: Director, Armament Policy Department

2. Permanent Subcommittee on construction investment

   Chair: Director, Infrastructure Department

3. Permanent Subcommittee on other expenditures

   Chair: Deputy Director, Budget Department

Membership on these Permanent Subcommittees is comprised of representatives from the Armament Policy, Infrastructure, Budget and Supply Departments, the General Staff, and certain other military units (see Annex 1 of Ref. 9).

How do these offices within the MoND interact to produce the annual request for defence spending? It begins each March, when the Budget Department prepares for the Ministry of Finance estimates of funding requirements for the following calendar year (which is also the fiscal year). The Budget Department works with the Level II Budget Holders and the General Staff in preparing these estimates. The estimates compare estimated current year spending with the amounts required for the next year, including funds for new investments mandated by law.

That same month, the General Staff establishes overall military priorities and tasks for the next year. Specific activities such as participation by the Polish military in peacekeeping activities in Kosovo would be addressed at this stage; however, it is not clear that broader inputs deriving from the national security and military strategies are. Estimates of the costs associated with the achievement of these military priorities and tasks are not developed at this stage.

In April the Budget Department forwards estimates for material plans to the Finance Ministry. In May they issue a document--Ministerial Guidelines--indicating the military goals and tasks for the next year taken from the work of the General Staff. This document does not include estimates of the costs of achieving these goals and priorities. The link between tasks, priorities and the resources estimated as necessary to achieve them, on the one hand, and the estimated funding requirements sent to the Finance Ministry referred to above is not clear.

In early June, Level II Budget Holders submit budget and material plans to the Budget Department and in late June, this information is reviewed by the Permanent Subcommittees.

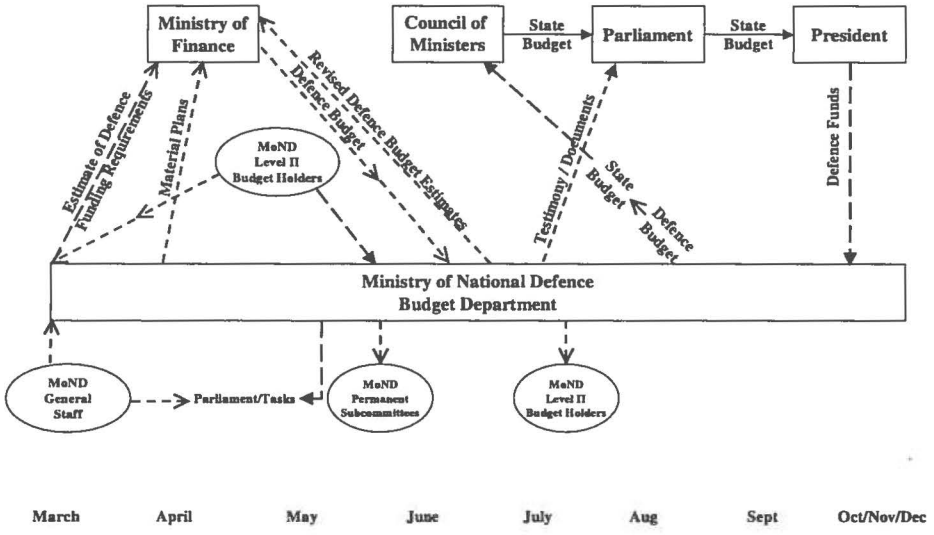
In July, the Finance Ministry is to provide a defence budget to the Ministry of National Defence. This budget is a response—and almost always an adjustment—to the MoND request for funding described above. The budget provided by the Ministry of Finance is not allocated by function or military service. The MoND has 21 days to adjust its budget plans to this budget. The MoND Budget Committee makes this adjustment and allocates the budget by service. The Budget Department then allocates spending among Level II Budget Holders. This revised budget data is provided to the Ministry of Finance in August. Budget justification materials are prepared by the Budget Department to be used when MoND officials testify before the Defence Committees in Parliament.

By September, the defence budget submission, based upon the July guidance provided by the Ministry of Finance, is to be finalized and incorporated within the State Budget. This State Budget, in turn, is submitted for approval to the Council of Ministers, and subsequently, to Parliament. The expectation is that the Council of Ministers and Parliament will make their decisions on defence (and other spending) by October. This would allow the Budget Department to develop detailed financial plans, resulting in a MoND Budget Decision. The Minister of National Defence has 21 days to sign this document once Parliament passes and the President signs the Budget Bill. If these events occur in a timely manner, the MoND can approve material plans and begin implementation by 1 January. The financial plans submitted by the Level II Budget Holders and approved by the Minister of National Defence serve as the basis for public tenders. Contracts, however, can be signed after January 1. If a Budget Decision is not made by 1 January, MoND uses the drafts of financial plans submitted in December to the Budget Department by the Level II Budget Holders.

The Ministry of Finance determines the schedule of events that MoND and other ministries must follow in preparing budget submissions. The schedule is subject to annual revision. Schedule slippage may and does occur, owing in part to the complex, important and frequently difficult budget decisions that must be made by the Council of Ministers and the Parliament. These decisions are addressed below. Figure 3 is intended to depict the events described above.

Figure 3

Defence Budgeting In Poland:
Activities Within The MoND



The Role of the Council of Ministers in the Defence Budget Process

Once the Defence budget request prepared by the MoND has been finalized, as per the procedures outlined above, it lies with elected senior officials to make the final decisions. The first of these decisions occurs within the Council of Ministers, led by the Prime Minister. Figure 4 is intended to depict the defence budget activities within the Council of Ministers.

In making a decision regarding the appropriate level of funding for defence, the Prime Minister must take into consideration other governmental priorities, as well as the impact of the budget upon the economy. The case for defence spending is made by a committee within the Office of the Prime Minister, called the Committee for Defence Affairs. That Committee, led by the Minister of National Defence, is comprised of the Ministers of Foreign Affairs, Economics, Finance, Communications and Education.

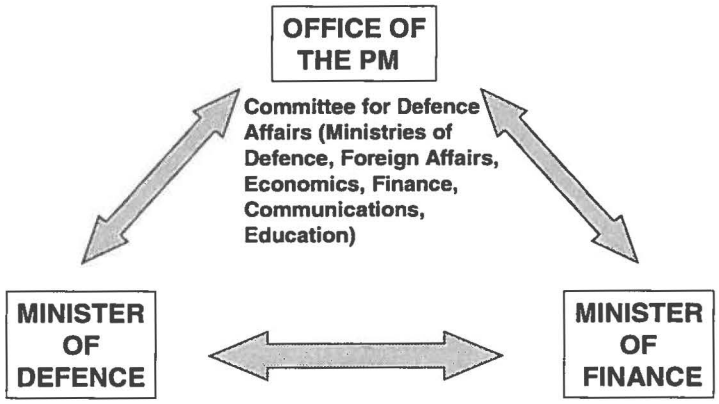
The Committee for Defence Affairs takes into consideration information of several kinds. Some of this information is necessarily classified. Other inputs include the budget materials and other documents pertaining to national security and national defence strategy prepared and submitted by the MoND. Particular attention is paid to major acquisitions proposed by the MoND.

Central to the decision on spending for defence and all other activities are the decisions made by the Ministry of Finance. This Ministry works with all other ministries and with the Prime Minister to make decisions on spending intended to achieve the different policy objectives of the Government. Once a final decision has been reached regarding the

levels of spending to be proposed by the Government to Parliament for defence and other activities, Parliament is supposed to act within three months, typically, the period between October and December, when the new fiscal year begins. (See Figure 4)

Figure 4

Defence Budgeting In Poland:
Activities Within The Council Of Ministers



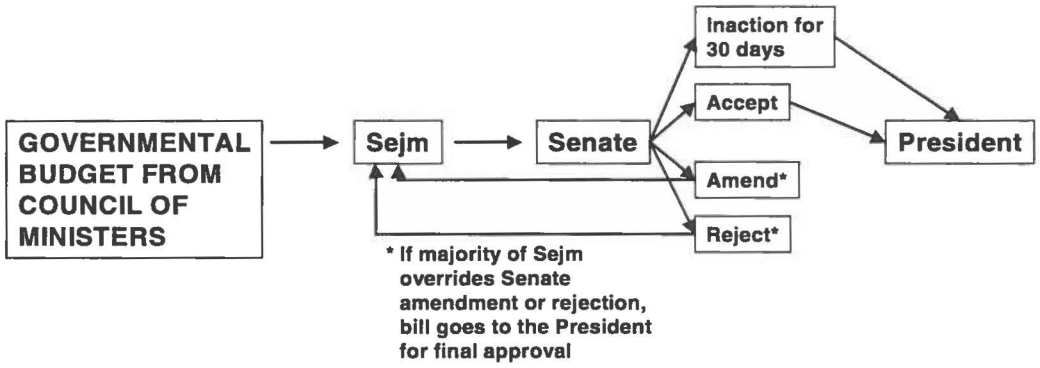
In 1997, the Council of Ministers adopted the "Outlines of the Government Programme for the Armed Forces Modernization 1998-2012." (Ref. 3) This action was apparently taken in response to President Kwasniewski's NATO accession initiative. It was to identify the funding needed to meet the procurement requirements deriving from NATO membership. The impact of this Programme is not evident in subsequent defence budget decisions made by the Council.

Budgeting for Defence Within the Parliament

The elected members of the two chambers of the Polish Parliament review the budgets for all activities of the Polish government, including the Ministry of Defence. The defence budget is first reviewed in the Sejm, then in the Senate. In the Sejm, the committees that play the critical role are the Public Finances Committee and the National Defence Committee. In the Senate, the relevant committees are the National Economy Committee and the National Defence Committee. While the political logic of parliamentary government suggests that the budgets developed by the Council of Ministers would generally reflect the views of the Parliament, it should be assumed that the committees in Parliament that act on the State Budget and the Defence Budget may make changes. Figure 5 is intended to depict the activities of the Parliament in shaping budget decisions for defence spending.

Figure 5

Defence Budgeting In Poland: Activities Within The Parliament



The Defence budget approved by the Council of Ministers is sent to the Sejm as part of the State Budget, where the Public Finances Committee first examines it. This examination focuses on total spending within the budget submitted by the Council of Ministers and the priorities reflected within that budget. The budget for defence is section 29 of the State Budget. Within the same time frame, i.e., early October, the MoND sends detailed budget data to the National Defence Committees of the Sejm and the Senate, to support the request for MoND spending.

In the Sejm, the defence budget is separately reviewed by the National Defence Committee. Officials from the MoND are called upon to explain and justify the request for defence spending to the Committee. The Committee then provides its views on the defence budget, including suggested changes, to the Public Finances Committee when that body meets in plenary session. Members of the Public Finances Committee may suggest changes to the defence budget during this session.

Once the Public Finances Committee reaches agreement on spending totals, the State Budget bill is sent to the Senate for consideration. There the review takes the same form as in the Sejm, that is, the defence portion of the budget is reviewed by a committee specializing in defence (the National Defence Committee) as well as the committee with authority to approve the entire State Budget, i.e., the National Economy Committee. The MoND provides testimony to the National Defence Committee.

In both the Sejm and the Senate, members vote for the defence budget when they vote on the overall budget, i.e., the State Budget. If the Senate approves a budget bill passed by the Sejm, the legislation is forwarded to the President for action. Should the Senate not act upon such a bill within 30 days after passage by the Sejm, the bill automatically goes to the President. The Senate may also amend or reject a budget passed by the Sejm. If a majority in the Sejm votes to override Senate amendment or rejection of legislation, it is sent to the President for action. In the absence of a vote to override, the Sejm must address the action taken by the Senate and pass a revised version of the bill at issue, thus restarting the cycle.

The Presidency and the Defence Budget

We have noted that executive power in Poland is shared between the President and the Prime Minister and his Government, and that executive power is balanced against the power of the Parliament. We can see the effect of this arrangement in the process of budgeting for defence. For example, as Commander in Chief, the President chairs the National Defence Committee, as noted above, and appoints the Chief of the General Staff and the commanders of each of the Services. His National Security Bureau (BBN) provides critical advice to the Minister of Defence in developing the budget and to the defence committees in Parliament during their deliberations on defence budget matters. And perhaps most importantly, the President has the political power to commit the resources of the country to a major security undertaking, as has occurred in Poland in the decade of the 1990s.

But the defence budget finally presented to the President may differ from the preferences he has articulated at earlier stages of the budget process. Trade-offs involving constituencies represented in Parliament are not uncommon, nor are changes reflecting difference between Ministers. Whatever the situation, the President has several options to exercise when the State Budget is presented to him by Parliament.

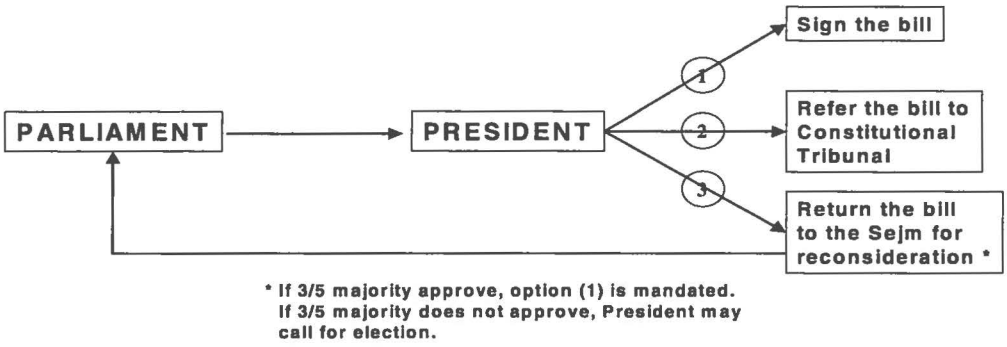
The President may approve the budget, in which case the funds are immediately made available to the MoND.

He can also choose to refer a bill to the Constitutional Tribunal. If this body agrees with the President that it violates some constitutional rule, he cannot sign it until the problem has been resolved. If they do not find a constitutional problem with the bill, the President must sign it.

Finally, the President can send a bill back to the Sejm for reconsideration. Should a 3/5 majority of that body vote to approve the bill again, it must be accepted by the President. In the absence of a 3/5 majority voting to override the president's disapproval, a major political stalemate is in effect. The Sejm has the option of meeting the President's objections to the bill, in which case the stalemate is resolved. Another, more hazardous solution is for the President to call for parliamentary elections. Figure 6 illustrates the President's options.

Figure 6

Defence Budgeting In Poland: Presidential Options



C. Resource Planning and Allocation

The centralized budget planning process in place when Poland was a member of the Warsaw Pact was abandoned in the late 1980s and early 1990s. It was felt that central planning was no longer needed and that an "invisible market hand" would supplant it. Long term state planning became non-existent and, as a result, the MoND essentially gave up planning for any term longer than one year. The only exceptions were the long-term plan for the development of the Armed Forces and the main individual weaponry research and development plans. (Ref. 2)

By 1994, when the Polish economy had started to stabilize, the government decided that an increase in the planning horizon was desirable. A social and economic program for the years 1994-1997 was established as a mid-term plan. While that plan did indicate the need for a strengthened military, it did not present a methodology or identify funding to achieve that goal. Internally, the MoND did develop a plan that identified requirements and funding out to 2010. The plan was used by the General Staff to prepare its program plans but it went no further. Externally, industry was clamoring for long term plans to use in planning development and production requirements. As a result of the military and industrial concerns, the Polish Parliament conducted a debate on National Defence in February 1995. The debate resulted in a parliamentary resolution recommending that the government propose the allocation of Defence funding as a percentage of GDP. While not law, it did result in an increase in Defence budgets (+5.3 percent in 1996, + .5 percent in 1997 and +3.8 percent in 1998). The significance of the increases may best be determined by noting that they followed a 60 percent decline in Defence expenditures over the period 1986-1995. (Ref. 2)

Although NATO membership has resulted in integration expenses and requirements to modernize the Armed Forces, the Polish Defense Budget faces significant competition for resources from domestic programs such as health care reform, the retirement pay system, education reform, and the new country administration model. The government wants to decrease public debt while increasing expenditures for state security (Justice and Defence). Additionally, the National Audit Office and parliamentary review committees have criticized the execution of previous defence budgets. Funding for procurement and research and development has been allowed to lapse and 2 percent of the planned expenditures were transferred to subsequent years.
(Ref. 2)

In FY 2000, the MoND received a budget equal to 2.04 percent of the GDP and 8.83 percent of the State Budget. For FY 2001, the Minister of Finance has proposed a decrease to 1.9 percent of the GDP. (Ref. 11) That budget was still under review by the Council of Ministers at the time of this report.

For FY 2000, MoND expenditures among the Services were broken down as follows: Land Forces -66 percent, Air Forces - 22 percent, Navy - 8 percent, and Others - 4 percent. Overall, Personnel accounted for 32 percent, Pensions and Allowances in Kind were 26.6 percent, Operating, Maintenance and Training were 29 percent, and Equipment and Infrastructure were 12.4 percent. Defence spending for FY 2000 totaled 13,805.6 MPLN. Of that total, 1,879.6 MPLN were for tasks directly related to membership within NATO (13.6 percent). (Ref.11)

3. Governmental Infrastructure Supporting Military Acquisition

Overview

With respect to Acquisition Organization, Policies, and Processes, the team would characterize the current system as "stovepiped." (The term "stovepiped" refers to a situation in which participants of functional bureaucracies or organizations do not coordinate their work with participants from other organizations.) The existing acquisition system is oriented toward local rather than broad goals, making it difficult to plan and coordinate processes. This is highly inefficient for decision-making, even on simple matters. The roles and responsibilities of the various disciplines that ought to influence the acquisition process are not clear, nor is it clear how coordination is carried out between and among the various disciplines. Contracting is considered a subordinate activity of logistics. Apparently the person responsible for executing the procurement does not function as the business manager of the acquisition process (responsible for pricing, terms and conditions and all the other factors that are considered in arriving at best value decisions).

One cannot fault the basic principles stated in the Public Procurement Act, i.e., transparency, competition, best value, and equal treatment of bidders or the preference for unlimited tendering as the primary procedure for conducting public procurement. However, the Act then prescribes in great detail how the procurement function is to be carried out, leaving little or no room for the exercise of judgment by the contracting officer or others involved in the tendering and award process. Such detail would be onerous even in regulations, but regulations would provide some flexibility for waivers. In a statute, it stifles innovation and often prevents rather than promotes the basic principles.

Furthermore, notwithstanding the stated preference for unlimited tendering, it appears that, in practice, a majority of procurement dollars are spent either sole source or with limited tendering. The tendering process under these circumstances is not adequate to ensure that prices are fair and reasonable or that the government is acquiring best value. This is especially true since there are no provisions for price analysis or price negotiation.

Finally, there is no provision for contract administration, which is at least half the acquisition process. A more recent update of the l994 statute, scheduled to take effect January l, 200l, is even more voluminous and does not address any of the shortcomings noted here.

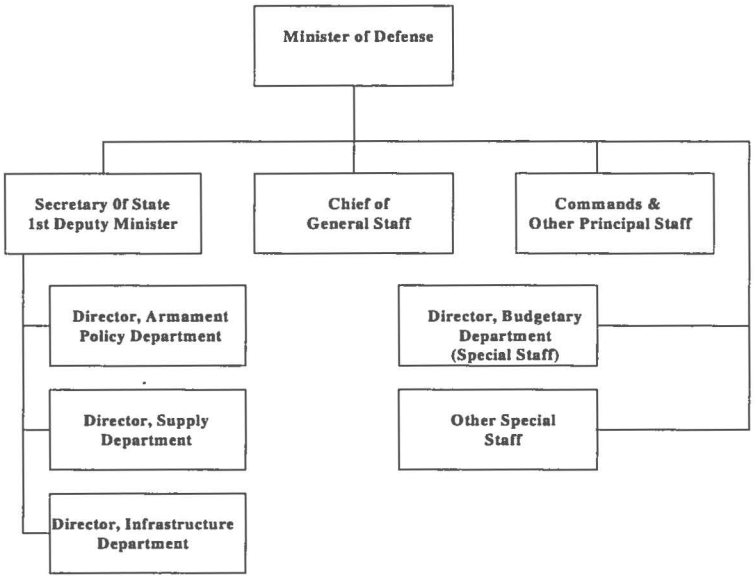
A. Acquisition Organization, Policies, and Processes

The Polish Ministry of National Defence does not currently assign program managers and program management teams to lead the acquisition of warfighting systems. This means that acquisition of a warfighting system is addressed within or among bureaucracies, without the benefit of a full-time single manager who is uniquely focused on the progress and success of that single product, i.e., the new warfighting system.

The Armament Policy Department is responsible for development of new warfighting systems. It receives the user's statement of performance requirements as a starting point and launches the development of warfighting systems through a progression of steps. The final steps in development are manufacturing in limited quantity and testing. Upon satisfactory completion of tests, the Armament Policy Department hands off responsibility for the new system to the Supply Department for serial production. See Figure 7 for the organizational links between the Armament Policy Department, the Supply Department and the Budget Department.

Figure 7

MoND Staff Relationship Among the Armament Policy, Supply and Budget Departments



Acquisition of warfighting systems and equipment are accomplished in four phases, as follows: Requirement Definition, Feasibility Study, Product Development, and Production. The principal participants are the Users (i.e., Service Commanders), Mission Specialists (i.e., General Staff members who represent the user in the cases of joint requirements), the P-5 (Strategic Plans), the Supply Department, Armament Policy Department (including planning/product development and military industrial plants and technical institutes that report to the Director of Armament Policy), External Developers (both public and private), and the Committee of Scientific Research (KBN).

The R&D phases are accomplished with MoND funding, often in combination with R&D funding provided by the Committee of Scientific Research. In general, basic research is funded by multi-year R&D funds provided by the Committee of Scientific Research. During system development approximately 50 percent of funding comes from the Committee of Scientific Research and the other 50 percent from MoND. The Committee of Scientific Research sets priorities for its R&D budget, even within that portion

designated for the MoND. The MoND has only a small voice in deciding those research priorities. MoND establishes its own priorities for the R&D funding it provides. In practice it is unlikely that the MoND funding priorities would match those of the Committee of Scientific Research.

Requirement Definition begins with the Service, except in the case of a joint requirement that begins with a mission specialist on the General Staff. As described in the report section on Requirements Generation, the user or mission specialist provides a statement of the required capabilities, the funding needed, and the proposed schedule. The General Staff P-5 (Strategic Plans) reviews the statement of performance requirements to verify that it is consistent with the National Military Strategy. The Armament Policy Department takes the statement of performance requirements and consolidates it into the list of requirements. The Armament Policy Department then prepares or oversees preparation of the corresponding specification. Following user review, the Director of Armament Policy makes the formal decision approving the specification and authorizing entry into the next phase, i.e., either into feasibility study or into serial production if there is a clear requirement and the product already exists.

The intent of the Feasibility Study is to gain confidence that a warfighting system can be built that meets the user's needs. The Feasibility Study process includes use of models and prototypes. Prototypes are designed and fabricated by the developer (public, private, or in concert) and are tested in user trials to ensure they meet performance requirements. The Supply Department pays the developer upon completion of pre-established milestones—as determined by the Armament Policy Department. The Director of Armament Policy approves entry into Product Development.

Product Development includes two major steps, (1) detailed design and (2) manufacturing investment. Pre-production systems are manufactured in small quantity by the developer and are tested in user trials. As in the previous phase, the Supply Department pays the developer upon completion of pre-established milestones—as determined by the Armament Policy Department. After the new system successfully passes required tests, the Director of Armament Policy makes the decision to hand the new system over to the Supply Department for serial production. Transition into production is a difficult step, made more complicated by a handoff between managing departments, i.e., from the Armament Policy Department to the Supply Department. As the handoff draws near, the Supply Department provides liaison personnel to work with the Armament Policy Department to smooth the transition. At the time of handoff for serial production, the Armament Policy Department provides the detailed technical documentation, processes, and manufacturing tooling.

User Trials during the R&D phases, described above, are the responsibility of the user. The user designs and participates in or oversees the trials. The trials may be conducted by one of the institutes.

After the handoff to the Supply Department for serial production, the Armament Policy Department continues to provide configuration management.

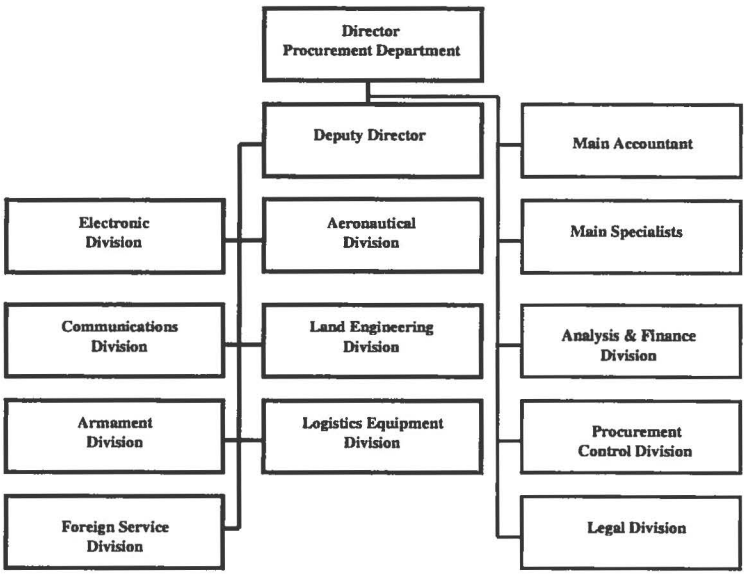
The process described above is used solely for products developed within Poland, although components or sub-systems may come from international sources. To provide management of the developmental process, the Armament Policy Department assigns a supervisor to oversee each new system. The developer also assigns a supervisor. Each year the Armament Policy Department supervises between one and two hundred programs of varying sizes with about 30 supervisory personnel. (Ref. 34)

The Armament Policy Department. The Armament Policy Department is comprised of about 85 technical supervisors. In addition to the 30 involved in management oversight of program development, an additional 55 technical supervisors provide management oversight for the nine institutes and 29 factories. The institutes vary in workforce size from about 80 personnel to about 300. The factories vary from about 100 personnel to 3000. The institutes must compete for their work, taking on commercial work to fill in gaps in their military workload. (Ref. 34)

The Supply Department. The Supply Department accomplishes its procurement function with approximately 150 technical personnel. (Ref. 34) This staff activity is responsible for serial procurement (i.e., production in quantity) in support of the Services. Branches within the department include armaments, ammunition, radar and electronics, communications and information systems, armored vehicles, chemical defence systems, helicopters and fixed-wing aircraft, and quartermaster. (See Figure 8)

Figure 8

Organization of the Procurement (Supply) Department



The tender process is conducted within each branch. While the Supply Department determines which tendering procedure it will use for routine procurements, that determination is made by the Minister of National Defence for complex military systems. This will include most if not all items resulting from the development phases described above. The Supply Department must, however, ensure that awards are made to technically qualified and fiscally responsible companies, both government-owned and private sector. There are very few private sector contractors capable of competing with government factories; hence, more contracts for defence equipment are awarded to these factories.

The Supply Department administers all contracts except for R&D, which go to the Armament Policy Department as described above. Contract administration includes ensuring that contractors comply with quality requirements and meet production schedules. The Supply Department locates quality assurance personnel onsite for oversight into both government and private sector manufacturing facilities. It also makes periodic payments as a contractor achieves certain pre-established milestones. Finally, it modifies contracts as required to incorporate changes and subsequent price revisions. Written procedures covering contract administration functions exist, but were not furnished to the team.

Testing. There are two test types: The first is military testing, conducted as field trials or in laboratories. Such testing supports milestone decisions. It includes confirmation of performance and military utility and is observed by military representatives. System qualification tests are performed under the supervision of an *ad hoc* government committee that is chaired by the user to confirm that system performance is in accordance with the latest version of technical and tactical requirements. The second type of testing, required by the Polish law on standards, includes such aspects as safety, health and military capability. This testing is accomplished separately from the first type. In combination, the two types of testing are redundant, thereby adding cost and time to the acquisition process.

Oversight and Reports. There are several principal reports addressing acquisition. Financial reports are prepared on a monthly basis, by Level II Budget Holders and submitted to the Budget Department. Every quarter, an appendix is added to the monthly reports detailing the main activities that have occurred and the associated financial figures. This report is submitted to MoND. It is then reviewed by a committee that includes the Minister, Vice Ministers, Chief of the General Staff and major department directors. After the end of the fiscal year (approximately February), progress reports on all programs are sent to the Parliamentary Commission on National Defense. Additionally, a report is submitted to the Committee on Scientific Research (KBN) once a year on the expenditures for research and development financed by KBN. The Supreme Chamber of Control conducts audits on MoND budget expenditures. The final audit report goes to the Minister of National Defence and to the Chief of the Supreme Chamber of Control.

Planning as a Part of Acquisition. Planning for procurement begins with MoND planning guidance and Budget Department fiscal guidance for preparation of the budget request. The MoND planning directive is issued in June (e.g., in June 2000, the planning directive was issued for 2001). The directive includes, among other concerns, the priorities, modernization by areas, and expenditure limits. In response, the Services each prepare a budget. The Armament Policy Department, in concert with the General Staff, then combines the user procurement plans and performs an analysis. The analysis includes multiple year issues, pricing review, serial production, expenditure limits, and improvement programs within cost targets and force goals.

When the Armament Director approves the procurement plan, it goes to the vice ministers for review, then to the Minister of National Defence. The Committee for Defence Affairs of the Council of Ministers reviews all the plans and then forwards them to the Parliament for vote.

B. Financial Management Organizations, Policies, and Processes

The Act of 26 November 1998 on Public Finances sets the framework for the financial management infrastructure supporting military acquisition and is the underlying basis for the policies and processes governing the funding for military acquisition.

The following is a general description of the annual process used to develop a budget for the MoND. Time lines for the various actions are as indicated.

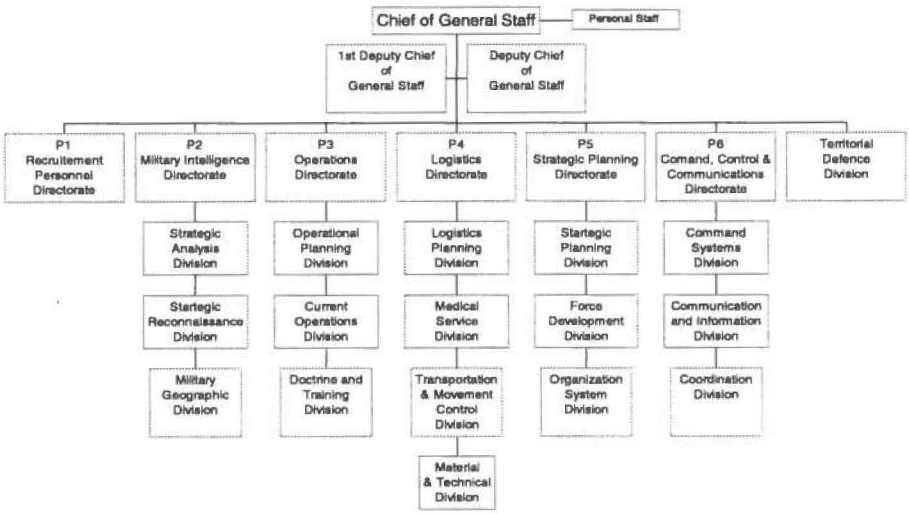
March
Planning is done on a one-year basis starting in March when the Budget Department prepares documents to inform the Finance Ministry of system changes that have occurred during the current year that will affect the next year's budget. The MoND provides instructions for the preparation of the budget and P-5 (Strategic Planning) of the General Staff (GS) allocates financial controls for the General Staff Departments to work with. Using these controls as guidelines, the General Staff determines military priorities and requirements for the following year. (Poland's General Staff (designated by the prefix "P" is organized in the typical military staff arrangement, numerically consistent with the US Joint Staff. A General Staff organization chart is shown in Figure 9. Each of the Services has a general staff, designated by the prefix "G" (e.g., G-1—Personnel))

April
The Budget Department prepares a budget request based on Level II Budget Holder plans and sends it to the Ministry of Finance for approval.

May
Ministerial Guidelines for the budget are issued.

Figure 9

General Staff Structure



June (First Half)
Based on the above issued guidelines, Level II Budget Holders submit their proposed budgets to the Budget Department who consolidates the inputs and forwards the budget to the Budget Department, which sends it to the Budget Committee for review.

June (Second Half)
The permanent subcommittees review the budget drafts, recommend changes and provide inputs to the Budget Department.

July
The Budget Department and Level II Budget Holders make adjustments to the proposed budgets to conform to the limits assigned by the Ministry of Finance. The Budget Department prepares a consolidated MoND Budget Draft and supporting justification.

August
MoND submits its budget, with justification, to the Finance Ministry.

September
MoND and Finance Ministry work together on smoothing the budget (clarification, adjustments, amendments, etc.) and send the budget to Parliament for approval.

October
Parliamentary hearings are held in the Sejm and the Senate by the Public Finances, National Economy and National Defence Committees.

October/November/December
Parliament debates the detailed budget submissions, makes adjustments and approves budgets. (Following approval of the budget recommendation by the Prime Minister and the Council of Ministers, Parliament has three months to approve the budget (Oct-Dec). Failure to approve the budget results in parliamentary elections.) Upon approval by Parliament, the State Budget is submitted to the President for final approval.

December
Approved budgets are promulgated.

C. Requirements Generation

The sequential requirements generation process and the exact organizational structure that manages requirements generation were not described to the National Acquisition Strategy Team in detail. However, numerous facets were described, as follows.

Planning for new weapon systems is not performed on a cyclic basis; rather the planning cycle is initiated by a "requirement" or need. Requirements may come from a deficiency that shows up in the field, e.g., a battlefield deficiency might be experienced by Polish forces in Bosnia. In the case of the new fighter aircraft, it appears that the requirement may have been driven by a NATO concern; this program is discussed in slightly more detail below.

Requirements are described as minimum performance attributes, specified in a statement of performance requirements. Performance ranges, that is, threshold (lowest acceptable performance) and objective (desired performance), are not used in describing performance requirements. This makes it difficult to accomplish cost-benefit tradeoffs.

The Service Commanders are the "users" or designate the "user representative" for their Service. The user is responsible for preparing statements of requirements that describe a warfighting need and also the associated schedule requirements. New requirements must be consistent with the National Security Strategy/National Military Strategy but it is not known by the team who is responsible for performing the verification review.

Within each Service, a statement of performance requirements for a warfighting system would progress through the Service G-5 (Plans) during the budget process. "Requirements" for spare parts must also be put together as part of the budget process, but would progress through the Service G-4 (Logistics).

Land Forces. In the Land Forces case, the office of the Chief of Staff has a cell that prioritizes requirements, following which the Chief submits his recommendations to the Land Forces Commander. Additionally, the Land Forces Chief of Logistics and the Chief Accountant make their recommendations to the Land Forces Commander. After the Land Forces Commander establishes his priorities, he (as one of the Level II Budget Holders within the Polish budgeting system) sends his budget request to the Minister of

National Defence. New warfighting system requirements are part of the budget submission.

Navy. The Navy described a slightly different organization and process. First, their process links user requirements to the National Military Strategy (NMS). It is not clear whether operational deficiency reviews occurred at the General Staff level or Navy staff level. The Navy Logistics Department is responsible for coordinating technical reviews. When that is completed, the Navy Commander prioritizes requirements with the assistance of the Chief of Staff, the Chief of Logistics and the Navy Chief Accountant, each of whom submits separate recommendations. The G-5 (Plans) then consolidates requirements as the Navy Commander directs. The G-5 has staff responsibility for modernization planning. The Navy Chief of Staff and the G-5 are responsible for reconciling resource shortfalls.

Air Forces. The Air Forces' system for requirements is top-driven, but requirements are also passed from users up through the chain of command. System specifications are coordinated in Training, G-4 and G-5, following which the Chief of Staff, the Air Force Chief Accountant and the Chief of Logistics advise the Air Forces Commander. The Logistics Department consolidates requirements. The Military Institute for Aviation, sometimes in conjunction with corresponding civilian institutes, assists with analysis of the deficiencies.

For a large acquisition such as the fighter aircraft, an extensive *ad hoc* group would participate in a review of the requirements. The group would include an inter-ministerial team and representatives from R&D, the General Staff, Air Command, the Military Institute of Aviation, the Office of Public Procurement Policy and Treasury. This team would be chaired by the user and would consider such elements as threat analysis and total lifecycle cost.

New requirements are reviewed as part of the MoND budget process—soon to be Planning, Programming, and Budget System. Currently, no single General Staff section has responsibility for new requirements. Under reorganization, the P-5 (Strategic Plans) will be responsible for collection of requirements.

The General Staff acts as an advisory body for the Minister, and harmonizes all the Services' requirements. In most cases, the General Staff does not conduct cost-benefit analyses.

Successful completion of the requirements generation process occurs when the new statement of performance requirements and associated funding come to the Armament Policy Department for action. At this point the statement of performance requirements is further defined until the description is sufficiently detailed that the warfighting system can begin acquisition.

D. Logistics Planning (Acquisition Logistics).

Logistics planning in support of acquisition was not described to the team. Therefore, no attempt is made in this section of the report to baseline logistics planning beyond the general discussion of acquisition in III.3.A above.

4. Law, Policy, and Implementation Guidance

Overview

The Act on Public Procurement appears to be the sole guidance for government procurement. It is both prescriptive and proscriptive, and is apparently interpreted to mean that what is not covered is not allowed, and that what is covered must be carried out exactly as prescribed. Thus, there is little flexibility or opportunity for judgment by those who are implementing this law. While the Act does provide for further implementing "ordinances" in a few places, it is so detailed that implementing regulations would be redundant. While the Act was undoubtedly well intended when it was enacted as a means of injecting some discipline into the procurement process, it will not serve well in a system that must be flexible, responsive to both national and international needs, and capable of being revised to meet changing conditions. Any deviation from the law would require parliamentary approval.

A. Law/Policy Environment

The current Polish acquisition system has developed over the past decade within the context of general European Civil Law principles, the revised Polish Constitution (1997), the Act of June 10, 1994 on Public Procurement (as amended on August 29, 1997 and April 9, 1999) and the Act of November 26, 1998 on Public Finance, as amended.

Generally, Civil Law systems, like Poland's, operate under a theory of specific legislative grants of rights and authorities, and hence are referred to as Civil Code Systems. The rights of each individual and the authority of the government, or correspondingly of government officers, must be specified by statute, both as to definition of the right or authority and the concomitant method of execution of same, i.e., *Nulle legae sine potentiatus* (no law, no authority). Given such a requirement for definitions and specifications, statutory schemes tend to be detailed, extensive and somewhat cumbersome.

Civil Law in Poland creates several effects upon the acquisition legal and policy environment that determine the general parameters of designing an acquisition system and defining the execution of duties and responsibilities within that system. The functions, format, powers and limitations of the acquisition system must be delineated and specified in such manner as to clearly and thoroughly define just how the system must operate with sufficient detail for an executive officer to know and to perform his or her functions. Under the present system, the tender process, the method of review and award, the requirements for a protest, the grounds for appeals, etc., and even, the operating culture tend to significantly limit any interpretation or initiative that seems to exceed statutory grants of power and where functional areas overlap (e.g., fund administrator vis-à-vis chief accountant). Collaborators diffuse the overall goals of acquisition, purchase or evaluation by subordinating the system goals to specific

functional rules within their purview of responsibility and use the "rule" to delay the entire process and hence reduce or decentralize the responsibility of each participant.

B. Contracting

The current Polish public procurement system was adopted in 1995, when the Act on Public Procurement of June 10, 1994 came into force. This Act created a uniform public procurement system and introduced a precisely described legal framework for the competition among entities pursuing public contracts. The Act intends for the government to solicit and select the "best offer" when it spends public money on goods, services and construction. The leading principle of the Act is fair and open competition. It requires fair and equal treatment of competitors, full and open competition, and clear, precise disclosure of information. Since its introduction, the Act has been amended twice, mainly to clarify rules and definitions, broaden its scope and provide more decentralization and transparency. In 1999 an amendment to the Act on Public Procurement was presented to the Parliament for adoption. This new law seeks to bring Poland's procurement laws in consonance with European Union law. It is anticipated that this new law will be adopted January 1, 2001.

There is an exclusion that overrides the Public Procurement Act. Before participating in defence procurement, the company must first comply with security requirements for certain projects or time periods (i.e., a company security clearance and individual employee security clearances). This is consistent with NATO requirements.

The Polish public procurement system is based upon the following principles:

- Clear definition of procurement and its methods
- Fostering competition
- Equal treatment of bidders
- Publication of tenders
- Transparency in bidding procedures
- Establishment of clear contract award criteria
- Economic use of resources
- Public access to contract award information
- The right to review

The Public Procurement Act generally applies to all state, municipal and local self-government procurement entities, unless regulated by separate provisions of law. The Act prescribes the following six tendering/bidding procedures:

1. Unlimited Tendering. In consonance with Poland's objective of maximizing competition, this is prescribed as the primary procedure for conduct of public procurement. The use of other than unlimited tendering, under the other five tendering procedures, is permitted only under special conditions specified in the Public Procurement Act and further described below.

2. Limited Tendering. Tenders may be submitted only by those potential contractors who were provided an invitation by the procuring activity. The procuring activity may only limit tenders when one of the following two conditions is met: (1) the specialized nature of the good or service limits the number of potential suppliers who have the requisite capability to satisfy contract requirements; (2) the costs of an unlimited tendering are substantially out of proportion to the value of the intended procurement.

3. Two-Stage Tendering. In the first stage, offerors are invited to submit their technical proposals without pricing. In the second stage, selected "highly rated" offerors are invited to submit priced tenders. The second stage may be preceded by negotiations between the procuring activity and the offerors.

4. Negotiations with Retaining Competition. In the event there is adequate competition (at least 2 potential bidders), the procuring activity may conduct negotiations with a "sufficient" number of offerors. At the completion of negotiations, the procuring activity requests all participants to submit their final bid/price. Contract award is then made to the offeror with the best offer. Per discussion with Office of Public Procurement officials, "best offer" could be construed as providing the "best value" to the government. Thus, procurement officials may award a contract to an offeror with a higher price as long as that offer satisfies stated best value criteria, such as lowest life cycle cost or higher quality.

5. Request for Quotations. This method is used when goods and services are readily available with established quality standards. Contracts are awarded to supplier(s) offering the lowest price.

6. Single Source Procurement. The procuring activity signs a contract after negotiating with only one supplier or contractor. The Act states that this tender method should only be used under the following circumstances: 1) The procuring activity wants to increase order quantities on an incumbent contract under the same terms and conditions, provided the additional orders do not exceed 20 percent of the original contract value. 2) The contract is for research, experiment, or preparation of a scientific opinion. 3) There is only one source capable of satisfying the activity's needs. 4) The contract is anticipated to be for a creative purpose in the area of arts and culture. 5) A contractor is specified as a result of a legally permitted national preference. 6) Urgency of need due to some unforeseen economic or social circumstance. 7) The value of the procurement (or financing) does not exceed 3,000 Euro. Contracts exceeding 20,000 Euro require approval by the Chairman of the Office of Public Procurement Policy.

Although not specified in the Act on Public Procurement, various Polish Ministry of Defence (MoND) officials stated that they were allowed to legally award single source contracts to support urgent defence requirements. It was learned during various interviews, that a large percentage of defence department procurements were conducted

using single source tendering procedures and that these procurements were "justified" due to military urgency. Some of these procurements were for well-defined goods and services with adequately described quality standards. On the surface, these procurements should have been made under "Unlimited" or "Request for Quotation" tender procedures. It is possible that inadequate acquisition planning and/or lack of well-defined procurement processes may lead to an inordinate number of single source procurements. As a result, the Polish public procurement system may not be fully harnessing the benefits of competition and may be more prone to potentially illegal activities and unethical behavior. (The exact number and aggregate value of acquisitions conducted under Single Source Procurement tender procedures is not known.)

In addition to having an "Open and Transparent" system, the Act on Public Procurement has established the following bidding principles and associated rules:

- Transparency–requires announcement of public procurements. However, defence expenditures appear to be exempt from the requirement to publicize proposed tenders or contract awards.
- Stability of Rules–requires that the tender specify such things as evaluation criteria, amendment procedures and time constraints.
- Prohibition of Dividing Procurements–prohibits procuring activity from dividing or splitting requirements into parts to circumvent procedures or thresholds as described in the Act.
- Strict Rules on Specifying Requirements–prohibit procuring activities from describing a requirement in such a way as to hinder fair competition.
- Clear Criteria for the Rejection of a Bidder–address when a contractor can be legally precluded from participating in a public tender. These rules are closely related to the decisions a contracting officer might make with respect to a contractor's ability to satisfactorily complete a contract (i.e., responsibility determination). For instance, bankrupt contractors cannot receive a contract award.
- Clear Requirements for Participation–require offerors to certify that they have satisfied all legal eligibility requirements to participate in the tender and that they possess the requisite capabilities to successfully complete the proposed contract.
- Clear Rules on Annulment of Public Procurement Proceeding–provide specific circumstances under which the procuring activity must cease the public procurement proceeding. For instance, some of these rules are related to procedural errors (e.g., not following announcement procedures), while others are related to the government's sovereign powers (e.g., the procuring activity has insufficient funds to complete the procurement or the procurement is no longer in the government's best interests).

The Office of Public Procurement, which reports directly to the Prime Minister, is the independent government agency responsible for public procurement policy and the administration of all matters related to public procurement. This office was created on January 1, 1995. It is a central agency within the Polish government, but is not a central

purchasing agency. The Polish system of procurement is mainly decentralized. Assigned budget holders are responsible for procurement management, execution and compliance with associated procurement acts and regulations.

The Office of Public Procurement is authorized to perform the following key procurement policy, training and information collection/dissemination duties:

- Reviews and approves administrative decisions related to public procurement conducted under other than "Unlimited Tendering"
- Publicizes all Unlimited Tenders above 30,000 Euro in the official Public Procurement Bulletin
- Prepares draft public procurement acts and regulations
- Cooperates with foreign entities on matters concerning public procurement
- Establishes and maintains a list of arbiters to facilitate procurement appeal proceedings
- Develops and conducts public procurement training programs
- Collects information on procurement planning, contract award and contract performance
- Disseminates procurement policy, rules and standardized procedures

Although the Office of Public Procurement charter calls for the review of administrative decisions related to public procurement, this office does not perform a significant procurement audit or overview function. It reviews administrative decisions to determine "strict" procedural compliance with Poland's Public Procurement Act. It does not assess the efficiency and effectiveness of procuring activities nor does it assess supporting business decisions.

It became obvious during our numerous interviews that many respondents from the Office of Public Procurement and Ministry of Defence believed that the Act on Public Procurement provided definitive "guidance" on how to conduct an acquisition. When asked how they manage or conduct the procurements, almost every one of the respondents stated it was conducted in accordance with the Act on Public Procurement. When asked how they evaluate competing business decisions related to a planned acquisition, respondents reiterated, "... The Act provides procurement and contract award guidance." Although the Act is extremely detailed, it does not cover every potential circumstance that could confront a contracting official. Nor does it provide detailed guidance on how to implement and manage procurement, resourcing and business decisions.

The Polish procurement and legal system currently mandates "strict" interpretation and enforcement of the Act on Public Procurement. As a case in point, we asked the following question to assess the flexibility of their procurement system. "How would you proceed if you wanted to pursue an acquisition strategy that made good business sense and did not contravene any existing laws or statutes, but was not specifically addressed in the Public Procurement Act?" Every respondent, including a representative from the Polish Senate, stated that the procurement official could not proceed until the

law was changed to include that specific strategy. Furthermore, an official from the Public Procurement Office was quick to point out that they rigorously enforce the Act and report all violations to the Justice Department for prosecution. Given this environment, it is not surprising that procurement officials are inclined to follow the Act verbatim. Such strict interpretation and enforcement of the Act limits the use of potentially sound business strategies, promotes unhealthy risk aversion, hinders flexibility, increases cycle time, and stifles innovation and process improvement.

In general, there was little discussion of detailed implementation regulations, policies or desk guides with respect of procurement during our fact-finding visit to Poland, and the team did not receive copies of any such material. We understand there is some guidance in the Supply Department for certain aspects of contract award and administration that are not covered by the Public Procurement Act. The apparently limited amount of such guidance may be attributed to widespread acceptance of the Public Procurement Act as the sole and definitive source for procurement guidance. Additionally, it appeared that more complex procurements were "managed" on an *ad hoc* basis without the benefit of detailed procedures and well-defined processes.

Development of procurement implementation guidance at the Agency and Budget Holder levels should reduce procurement administrative leadtime. Additionally, promulgation of well-designed procurement regulations and processes should lead to significant process innovation. However, this and other potentially beneficial guidance must be preceded by an overhaul of the Act on Public Procurement to eliminate the voluminous detail that virtually precludes the exercise of discretion by contracting personnel. The Act should be reduced to a set of broad principles, with implementing guidance to be provided within the Executive Branch. Such a process would not only provide the flexibility necessary to make day-to-day decisions without going back to Parliament for a statutory waiver, but would give the Executive the flexibility to change the regulations to meet changing marketplace conditions. (Ref. 21)

C. Program and Budget

The Act on Public Finances of 26 November 1998 defines the terms, the organizational and legal forms, the rules for drawing up draft budgets, the rules for passing budgets, and the penalties for violating those rules. It is explicit in defining the organizations involved with public finance as well as their responsibilities. The individual with overall responsibility for state budget preparation is the Minister of Finance.

Specific policies related to Defence spending include the requirement for any multi-year program procurement greater than 100,000,000 PLN ($24M) to be approved by the Council of Ministers. During budget execution, up to five percent of one funding account can be moved to another budget account (subject to certain restrictions).

At the end of the fiscal year, authority may be given to move some unexpended funds into the next fiscal year but no further. Mostly, this is restricted to unexpended balances of committed credits.

Poland does have an anti-deficiency law, which precludes the expenditure of funds that have not been allocated.

The Ministry of National Defence made the decision to adopt a Planning, Programming, and Budgeting System (PPBS) in 1999. Currently, there is a plan for PPBS but it is not yet fully developed and implemented.

D. Labor

The availability of adequate skilled labor does not appear to be a problem in Poland. The relatively low unemployment rate and the high literacy rate are positive indicators. Thus, labor does not appear to be a problem vis-a-vis a national acquisition system. If there are any areas in which certain skills are lacking, these were not discussed.

E. Offsets and External Affairs Concerns

Offsets are required, by statute, for all procurements from foreign sources that are over a threshold amount (currently the Polish equivalent of 5M Euros). The offset must be for the full value of the arms or military equipment being purchased, and at least half must directly benefit the Polish defence industry. The present statute has not been in force for a year, so there is no history of experience. Like the Act on Public Procurement, this statute is quite precise in its terms. In effect, it functions as a law, a policy and a set of regulations. One important or potentially important area where the statute is silent is with respect to reciprocity of offset arrangements when dealing with NATO partners or signatories to the Government Procurement Agreement.

F. Environmental Issues

Polish acquisition and procurement policy officials admit that concern for environment quality should be part of their consideration and planning. However, this is not formally required, either by legislation or regulation. It is acknowledged that NATO and European Community requirements form the models that do, or will, most likely apply, but as of now, no specific enactments have addressed this issue. European Community (EU) membership is contingent upon member states meeting prescribed standards relating to economic and fiscal policy, human rights and legal process standards and monetary policy, as well as environmental quality. It is most likely that Poland will either adopt EU guidelines as a separate legislative agenda prior to EU accession or that the Polish ratification process of EU membership will include adoption (and/or exclusion by exception) of European Community guidelines relating to environmental quality measures.

G. Liabilities Affecting Military and Civilians in Acquisition and Contracting

Under the Polish Civil Law system, a government official, military or civilian, who has acted outside the scope of a statutorily specified grant of authority, may be held

financially liable. All executive actions must have a legislative mandate, normally provided by one of three statutory sources:

1. Establishment authority – general legislation creating an office or department of government and specifying responsibilities, actions to be taken, procedures and reporting channels; and
2. Enabling legislation – usually part of the State Budget, e.g., a. line item that authorizes a specific expenditure, tender or acquisition process; or
3. Classified materials – general legislation requiring a company or outside supplier (including employees) to obtain security clearance for handling classified materials.

Acquisition personnel appear to carefully follow the "rules" so as not to exceed their authority and incur liability. We are informed that very few cases are referred to the courts by investigating authorities. Since most procurement decisions are collaborative and require a chief accountant to approve expenditures, the responsible administrator obtains a "budget review" before the expenditure is made and authorized limits are seldom exceeded.

H. Socioeconomic Policies and Programs Affecting Military Acquisition

The procurement process is apparently not being used as a wedge to control wages paid under government contracts, or to require performance of contracts in areas of high unemployment, or other similar measures which have long been part of the fabric of government contracting in the US or elsewhere. This appears to be true also with respect to socioeconomic policies and programs in general. One exception is the "buy Poland" policy, where a differential of up to 20 percent of labor costs is allowed in contracts for services. However, this differential does not apply to hardware.

I. Public Versus Private Sector Determinations

Poland is committed to developing a free market economy in which its defence needs can be acquired from the private sector. However, a significant, if not major portion, of defence acquisition is still awarded to government-owned factories. There are no studies or statistics available to show what private sector capabilities are available to compete with government factories, nor is there a clear plan for converting the government factories to private ownership. One of the barriers to achieving this appears to be a fear of social upheaval if significant numbers of workers in these factories are added to the ranks of the unemployed. The factories themselves, as well as most of the workers, could continue to work in the private sector, but privatization would lead to efficiencies that would reduce the number of workers needed. This is an area where the government will have to make some difficult decisions, and where the U.S. experience in defense conversion and in military base realignments and closings could be of help.

5. Education of the Workforce

Overview

Polish government officials and procurement personnel currently lack the broad view of acquisition and its role in helping to carry out agency missions. In general, Polish acquisition managers view procurement as merely a "buying" function and have placed responsibility for its execution under logistics organizations. As such, acquisition planning, if done at all, tends to be conducted late in the acquisition cycle by *ad hoc* teams. This approach typically creates a fragmented process and normally leads to sub-optimized, stove-piped decisions. This process may be appropriate to acquire low value, less complex and well-defined requirements. However, such a narrow focus and fragmented process may hamper an organization's ability to obtain best value and optimal ownership especially when acquiring major systems.

Accordingly, procurement should be an integral part of the following acquisition process.

1. Review the mission
2. Determine need based on the mission
3. Determine the operational requirements
4. Define/describe/refine the technical requirements
5. Conduct Acquisition Planning
6. Solicitation Phase
7. Source Evaluation/Selection Phase
8. Negotiation Phase
9. Contract Award Phase
10. Contract Administration Phase
11. Ownership Phase (Operation & Support)
12. Disposal

Successful acquisition systems and processes capitalize on the strengths of all participants in the acquisition process. Functional experts and different stakeholders in the process must work together as a team to build successful programs, identify problems early, and maintain a cooperative spirit of resolution. It became apparent during our fact finding that the Polish education system helps generate very professional and competent functional experts. However, the current education and training systems do not provide the various acquisition participants with an overview of the entire process and where those stakeholders fit into the process. Nor does the system provide acquisition mangers with the skills to manage cross-functional teams.

As a case in point, numerous respondents knew their own specific duties, but could not articulate the primary roles and responsibilities of other functional organizations. This lack of the "big picture" may also be attributed to military officer placement procedures. Unlike the United States' system, Polish military officers tend to remain in one organization for many years. In fact, one mid-grade officer stated that he could finish out

the remaining ten years of his career at the Ministry of National Defence if he so chose. Being able to stay at one command for a long period has some potential specialization benefits. However, the potential downside is the tendency to advocate parochial views and to lose the opportunity to network and gain insight into other functional organizations.

Procurement executives should be accountable for the results of what people do within the acquisition system and must, therefore, be primarily responsible for agency procurement career management. As such, these executives should analyze workforce needs and institute agency-wide plans, programs and standards for:

- Ensuring proper classification of positions
- Recruiting and selecting qualified individuals
- Establishing and strengthening procurement intern programs
- Educating and training the workforce
- Appointing qualified program managers and contracting officers
- Establishing accountability requirements and incentives for quality performance

A. Development of an Educational Model

A comprehensive education and training effort available for both military and civilian personnel is necessary to develop a professional acquisition workforce. The Polish education system begins to channel students in their high school years towards specialization. This produces a highly specialized workforce and professional cadre among the population, and is supported by a number of excellent universities in the civil sector and two universities administered by the Ministry of Defense (National Defense University, Military University of Technology). These schools have modern curricula in most of the subject areas of concern including, Management Sciences, Engineering, Information Sciences, Logistics and Economics.

The current education scheme does not include a dedicated professional development format for either program managers or contracting officers, although engineers, technicians and logisticians seem experienced and very well trained, with department heads in these functional areas typically holding a Ph.D. A systemic weakness, as noted earlier in this paper is the lack of a development construct that produces a manager with a broad overview, capable of looking beyond his or her professional specialization and understanding the acquisition process in its entirety. Additionally, it appears that the current education system does not provide managers with the requisite skills to manage multi-disciplinary teams.

Universities must be integrated with specialized training institutions to provide basic undergraduate education in business and technical fields, specialized graduate education in these fields, and concurrent skills training commensurate with various job assignments. This effort will be of prime importance in developing a professional acquisition workforce capable of providing Poland a highly efficient and modern military force ready

to meet its national objectives. Integrating non-national assets such as the US Defense Acquisition University, the Naval Postgraduate School and various NATO schools will accelerate that developmental process and support and sustain the educational process already underway.

B. Contracting Certification Program

During our interviews with MoND officials, it was noted that Poland does not have a designated "Contracting Officer" position, training or career path. Once a requirement is identified, it is assigned to a procuring activity. The head of that activity is responsible for the "execution" of that procurement and, depending upon the anticipated contract value, may be delegated responsibility for signing the ensuing contract. Day to day management for the procurement is usually delegated to a junior or mid-grade official depending upon the value and complexity of the procurement. This individual usually has an advanced technical degree but typically does not have any significant business experience, education, or training. If the procurement is complex, the leader of the procurement may call in experts from other functional fields to provide technical, financial, legal and operational expertise. By their own admission, these procurement leaders and teams are typically assigned on an *ad hoc* basis. As a result, procuring organizations may lose valuable corporate knowledge and team synergy when these teams are disbanded. Additionally, the lack of formal contracting and business training for procurement team leaders, coupled with the lack of documented procurement processes and procedures, may adversely impact acquisition efficiency and effectiveness.

A university degree is not a prerequisite for everyone who works in procurement. There are many areas of specialization within the acquisition process where technical training will suffice. However, a college degree should be an entry requirement for contracting officers who will be working at a level above routine credit card type purchases, and for other disciplines which complement the contracting officer (contract administration, auditing, contract review, pricing, etc.). This should be supplemented by periodic training to stay abreast of new developments, new techniques, new or revised statutes or regulations, etc.

During our interviews, we learned that procurement managers and various acquisition participants did not receive any ethics training prior to assuming their duties. This may be attributed to the belief that the Public Procurement Act provides definitive guidance on how to manage and execute procurements. However, this viewpoint fails to recognize that there could be multiple acceptable approaches to satisfying a requirement. Competing contracting strategies could all be acceptable from a legal and business standpoint, but could have vastly different strengths and weaknesses. Conversely, a competing strategy could be legal in accordance with the Public Procurement Act, but could be a blatantly unethical or borderline ethical business approach. Blind adherence to the Act in these cases could undermine the integrity of the acquisition process and could adversely impact crucial business relationships. Those responsible for executing and managing contracts will need training in business, decision support systems and risk management.

C. Program Management

Program management organizations and processes are not used or taught in Poland at this time. The Military University of Technology has proposed that Production Logistics (that is, acquisition), be embedded in a one-semester logistics postgraduate course. The government has made no decision on this proposal. The team members unanimously agreed that acquisition does not fit well within logistics. Because of its complexity, it should be taught as a separate curriculum.

D. Financial Management

The Institute of Economics of the National Defence University offers a 10-month postgraduate course in defence resources management, a 10-month course for senior accountants, and a 10-month course for accountants. The courses are considered part time and consist of 250-300 hours of instruction. The students are mostly military officers, with a few civilians. Civilian universities and institutes also teach financial management but are not oriented toward military needs. (Ref. 19)

E. Logistics

Although logistics subjects are taught at the Military University of Technology, **acquisition logistics,** that is, the logistics planning that is done concurrently with a development, is not. As noted above, the Military University of Technology has proposed Production Logistics as part of a one-semester logistics postgraduate course.

6. Balance of Public/Private Sector Capabilities

A. Infrastructure

The majority of defense manufacturing is still performed in government-owned factories. Much if not most of the repair, maintenance, and overhaul of defence hardware is also performed in government facilities. Some private sector capabilities are emerging, particularly in the high technology area, but there is apparently little if any duplication of government manufacturing facilities. There is, in most cases, not enough potential demand to warrant such an investment, and in many instances there is already excess capacity in the government factories. The situation is, in some respects, comparable to that faced by the US a generation ago as it began to reduce infrastructure by contracting out functions that could be performed cheaper in the private sector, and closing many shipyards and other military facilities. There was little information available to the team on what military requirements are being or can be procured in the private sector, or to what extent private sector capabilities exist.

B. Critical Skills and Core Capabilities

The skills and capabilities for Poland to meet its defence needs and NATO commitments are already in place in the current infrastructure. There have not been any studies to determine if any of these must be maintained by the government in order to ensure ready sources for defense hardware, or whether they would be just as available if the current infrastructure were privatized.

C. Plans for Conversion/Modernization/Privatization

The officials with whom the team discussed this subject stated that the government does plan to privatize the government factories, but has not yet developed an overall time-phased plan for conversion to private ownership.

IV. Appendices

A. National Acquisition Strategy Time line

B. Acronyms

C. Extracts from Department of Defense Documents

D. References

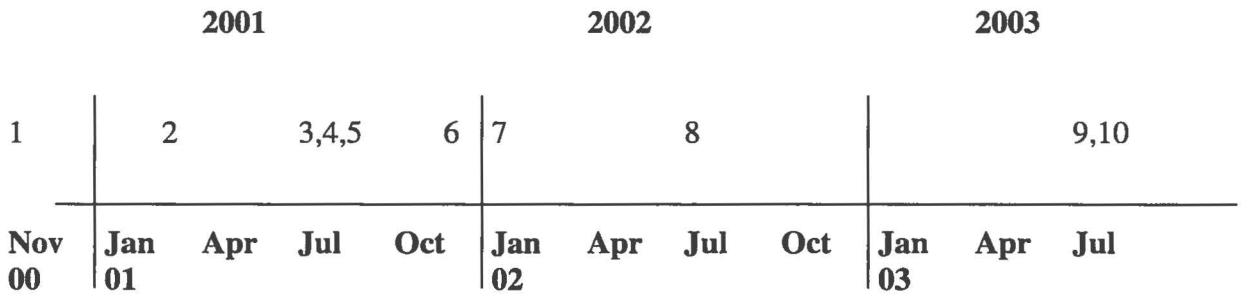
F. National Acquisition Strategy Team Members

Appendix A

National Acquisition Strategy Implementation Plan and Time Line

Appendix A

National Acquisition Strategy Implementation Plan and Time Line



Notes:

1. Nov 00—Report-Out of National Acquisition Strategy
2. Early 01—Short courses on PPBS
3. Jul 01—Students begin Program Management Course at Naval Postgraduate School
3. Jul 01—Students begin Contracting Management Course at Naval Postgraduate School
4. Jul 01—First increment of Program Management short courses
5. Jul 01—First increment of Contracting short courses
6. Nov 01—Institute first Program Management Office
7. Jan 02—Program Management Office Implementation Review and Workshop
8. Oct 02—Contracting Management Workshop
9. Jul 03—Implement Program Management postgraduate course
10. Jul 03—Implement Contracting Management postgraduate course

Appendix B

Acronyms

Acronyms

BBN	National Security Bureau
CJCSI	Chairman, Joint Chiefs of Staff Instruction
DOD	Department of Defense
EU	European Union
GDP	Gross Domestic Product
GS	General Staff
ICT	Integrated Concept Team
IPPD	Integrated Product and Process Development
KBN	Committee of Scientific Research
MoND	Ministry of National Defence
MPLN	Million Polish Zloty
MUT	Military University of Technology
NATO	North Atlantic Treaty Organization
NPS	Naval Postgraduate School
OECD	Organization for Economic Cooperation and Development
Ph.D.	Doctor of Philosophy
PM	Program Manager
PM	Prime Minister
PPBS	Planning, Programming and Budget System
P-Staff	Polish General Staff
R & D	Research and Development
TOC	Total Ownership Costs

Appendix C

Extracts From Department of Defense Documents

Appendix Contents

Program Manager's Bill of Rights and Responsibilities

Program Managers have the Right to:

- A single, clear line of authority from the Defense Acquisition Executive.
- Authority commensurate with their responsibilities.
- Timely decisions by senior leadership.
- Be candid and forthcoming without fear of personal consequences.
- Speak for their program and have their judgments respected.
- The best available training and experience for the job.
- Adequate financial and personal resources.

Program Managers have the Responsibility to:

- Accept program direction from acquisition executives and implement it expeditiously and conscientiously.
- Manage their programs to the best of their abilities within approved resources.
- Be customer focused and provide the user with the best, most cost-effective system.
- Innovate, strive for optimal solutions, seek better ways to manage, and provide lessons learned to those who follow.
- Be candid about program status, including risks and problems as well as potential solutions and likely outcomes.
- Prepare thorough estimates of financial and personnel resources that will be required to manage the program.
- Identify weaknesses in the acquisition process and propose solutions.
- As the Program Manager, I have full program responsibility and accountability. I pledge to do everything in my power to warrant the rights granted to me and to fulfill these responsibilities.

To signify our support for the Program Manager and our commitment to the Program Manager's Bill of Rights and Responsibilities, we affix our signatures below.

_____ _____

Program Executive Officer Program Manager

_____

Acquisition Executive

_____

Defense Acquisition Executive

Program Manager's Charter for an Automated Information System

This Charter is a written contract between the program manager (PM) and the chartering authority. The Charter:

- Provides the authority for ensuring that system development and project transition are conducted within a clearly established management framework;
- Establishes the objectives, scope, organization, responsibilities, methods of operation, and required resources for the system; and
- Identifies the lines of authority and accountability, such as relationships among the Office of the Secretary of Defense Principal Staff Assistant, heads of the Department of Defense Components, participating and supporting organizations, and the Program Manager.

Purpose: to establish a fully functional system, which will standardize data elements and support uniform business practices throughout the Department.

Scope: program includes all contracting, receipt, storage, and distribution activities for goods and services required by the Department. The program will use open systems and relational database technology to provide timely and accurate information to improve the management of supplies and services.

Functional Objectives:

- Support the use of standard Department management policies, processes, and shareable data.
- Improve timeliness, accuracy, and effectiveness of management information.
- Optimize, streamline, and integrate disparate automated systems, subsystems, and databases.
- Facilitate the Department-wide integration of a standard, robust, management environment through the implementation of standard processes, and standard shared data.
- Provide for improved data management and data integrity by electronic input of selected data to a logically shared data repository. Standard data and data transmissions must be employed. The capability to exchange data within the Department, other Government agencies, and with industry must be provided.
- Provide information exchange capabilities among Department components and related functional areas.
- Provide for use of Department-wide electronic commerce/electronic data interchange (EC/EDI).
- Streamline manual management processes, including the automation of manual management activities and the ability to input data only once at the source.
- Provide an on-line means for capturing and evaluating customer feedback information.

- Provide the status of materials that are on order or on hand in a near-real-time environment to enable Department managers to more closely monitor the assets of the Department.

Extracted from Chairman, Joint Chiefs of Staff Instruction 3170.01A, Requirements Generation System, Enclosure A

1. ***Requirements Generation System.*** The requirements generation system, along with the acquisition management system and the Planning, Programming, and Budgeting System, form DOD's three principal decision support systems (see Figure 1). A close and effective interface among these systems is required to ensure quality products are acquired for the nation's Armed Forces. The requirements generation system produces information for decision makers on the projected mission needs of the warfighter. These mission needs are defined in broad operational terms in a Mission Need Statement (MNS) document. MNSs are prepared for needs that develop into warfighter's operational requirements that could result in new Defense acquisition programs. Validation of the MNS confirms the fact that a non-materiel solution alone cannot satisfy the identified need, and that a potential "new concept/system" materiel solution should be considered. Subsequently, the needs expressed in the MNS are developed into requirements by the Requirements Generation Process in the forms of Capstone Requirements Documents (CRDs) (if required) and Operational Requirements Documents (ORDs). CRDs provide ORD development guidance through validated performance based overarching capabilities for a mission area that forms a system of systems or family of systems. ORDs translate the MNS and (if applicable) CRD requirements into detailed, refined performance capabilities and characteristics of the proposed system. ORDs provide the specific requirements base for the Acquisition Management System and the PPBS for advanced Defense acquisition program development, programming and budgeting. (Figure 2) highlights the interface of the requirements and acquisition systems.

Figure 1. -- The Three DOD Decision Support Systems

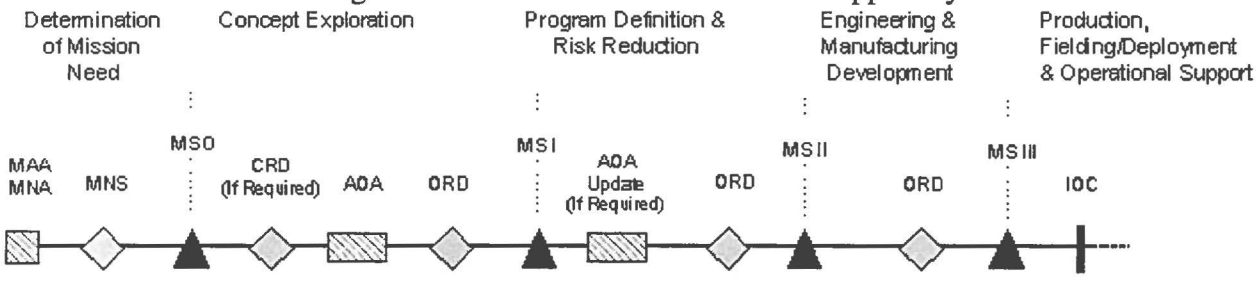
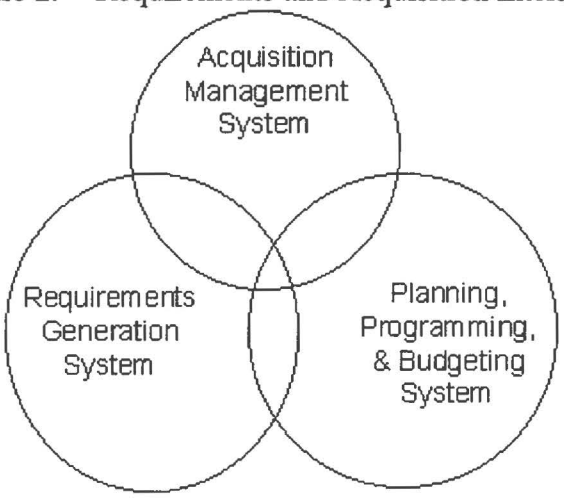


Figure 2. -- Requirements and Acquisition Interface.



2. Two areas that will have significant impact on the future of the requirements generation system are joint requirements and DOD initiatives toward evolutionary acquisition which intends to provide quality products to the warfighter in a timely manner.

   a. ***Joint Requirements.*** Joint requirements are requirements that impact more than one DOD component. All C4I and ISR systems for purposes of compatibility and interoperability and integration are considered joint. Programs having a Joint Potential Designator (JPD) of Joint or programs designated as "joint" will become more numerous over time and need to be developed with participation of all DOD components. Joint requirement responsibilities and procedures are addressed in the enclosures of this instruction.

   b. ***Time-Phased Requirements in support of Evolutionary Acquisition.*** As DOD moves to reduce cycle time of traditional acquisition activities, through evolutionary acquisition, there needs to be an effective mechanism for specifying operational requirements to support this process. Time-phased requirements is an approach to consider requirements in an incremental manner over time such that they match projected threat and technology to deliver systems to the field in increasing increments of capability. Specific guidance is provided in Enclosure E.

Extracted from Chairman, Joint Chiefs of Staff Instruction 3170.01A, Requirements Generation System, Enclosure E

Operational Requirements Document Generation Process

1. Operational Requirements Document (ORD)

a. General. The ORD is a formatted document containing operational performance requirements for a proposed concept or system. The system proposed for continued evaluation in later acquisition phases shall be described in an initial ORD in terms that define the system capabilities needed to satisfy the mission need. The requirements, stated as operational performance parameters in the initial ORD, shall be tailored to the system (e.g., satellite, aircraft, ship, missile, or weapon) and reflect system-level performance capabilities such as range, probability of kill, platform survivability, and the timing of the need, etc. The four phases of the ORD generation process are definition, documentation, validation, and approval.

b. ORD Definition Phase. The definition phase defines and justifies the development of a ORD. The ORD sponsor will apply Analysis-of-Alternatives (AOA), risk reduction demonstrations, military utility assessments, Advance Concept Technology Demonstrations (ACTD), Advanced Technology Demonstrations (ATD), experimentation, test and evaluation, cost-schedule-performance tradeoff, requirements cost tradeoffs, and affordability analysis in the development of draft ORD requirements (especially KPPs). These parameters best characterize the most promising concept(s) to be pursued in a new acquisition program. Also, as DOD moves to reduce cycle time of traditional acquisition activities, through evolutionary acquisition, the ORD will serve as the vehicle for documenting successive operational requirements and managing the scope of that acquisition process. The ORD should also identify the factors that drive the timing of the requirements such as retirement of existing systems or expected timing of a new threat.

(1) Time Phased Requirements in support of Evolutionary Acquisition. Evolutionary acquisition is a streamlined acquisition strategy that fields a core capability, with a modular open structure and provides for additional future increments in capability upgrades. Time phased requirements support evolutionary acquisition in phases by allowing systems to be delivered to the field in increasing increments of capability. The future (follow on) increments are developed as blocks or models by the acquisition community as requirements are refined by the warfighter's increased understanding of the delivered capability, the evolving threat, and available technology. The proposed approach for subsequent incremental developments should be included in the acquisition strategy documents. Depending on the size and scope of the additional capability, some increments may need be covered by an annex to the existing ORD, may require a new ORD, or a manner agreed to by the JROC. Evolutionary acquisition plans should be consistent with other acquisition plans and developed by the acquisition community with the support of the user community. Evolutionary acquisition is a preferred approach but

is not necessarily appropriate for all development efforts. Automated Information Systems are prime candidates for evolutionary acquisition.

(2) Demonstrations to assess military utility. Military utility demonstrations such as ACTDs, ATDs, requirements definition/technical demonstration activities during PDRR or experimentation should be considered for concurrent requirements generation and concept risk reduction. Military utility demonstrations should be conducted by the CINCs and Services to ensure user/warfighter involvement early in the requirements generation process. During PDRR the program may employ one or more design concepts to demonstrate technical maturity, facilitate analysis of alternatives, support CAIV trades and refine threshold and objectives initially stated as broad measures of effectiveness.

(3) Advanced Concept Technology Demonstrations. The goal of ACTDs is to assess the military utility of a significant new capability and to conduct that assessment at a scale size adequate to clearly establish operational utility and system integrity. The JROC will prioritize proposed ACTD candidates, together with proposed CINC sponsor and Lead Service/Agency. Once the ACTDs are prioritized the JROC will forward the prioritization with CINC sponsor and lead service or agency, via JROCM, to USD (A&T). This action equates to a mission need determination for each ACTD. The lead service is responsible to develop the Operational Requirements Document for ACTDs that have shown military utility and have been approved to transition to the formal acquisition process. The ACTD management plan should address the schedule for anticipated ORD development to ensure a smooth transition to the acquisition process. The JROC requests that if funding is insufficient to support the candidates in priority order, the JROC be consulted regarding the rationale for implementing the ACTDs out-of-priority order.

(4) CRD interface. DOD components will determine if the ORD they are developing falls under any existing CRD. If the ORD is under a CRD mission area then the ORD sponsor must work closely with the CRD lead during ORD definition and development. The JCPAT database and the Joint Staff J-8 will catalog all validated and approved CRDs.

c. ORD Documentation Phase. The ORD format can be found in Appendix A of this enclosure. The ORD sponsor in coordination with the appropriate DOD components will prepare the ORD. The ORD provides a bridge that links the needs and capabilities identified in the MNS and CRD (if applicable) to the Acquisition Program Baseline (APB) and the contractual specifications for a program. The ORD should be written at the appropriate level to describe the system and is initially submitted at Milestone I with broad objectives and acceptable requirements. The initial ORD will include the evaluation of requirements based on commercial market potential required by reference b. As a program is further defined between the acquisition milestones, the ORD is updated to reflect the results of analysis, experimentation, testing, technology insertion, CAIV and cost-schedule-performance trades. If the program falls under a CRD, the ORD will show linkage and the contribution to the appropriate CRD operational requirements and CRD KPPs. The ORD will include a description of operational capability, threat,

shortcomings of existing systems and C4ISR architectures, capabilities required for the system, program support, force structure and schedule/program affordability for the system.

(1) Description of Operational Capability

(a) Summarizes the mission need.

(b) Describes the overall mission area(s) that the system will support. Identify the CRD(s) that impact the system (if appropriate).

(c) Describes the type of system proposed.

(d) Define the missions that the system will perform (e.g., CAS, SEAD, Interdiction).

(e) Defines the operational and support concept(s) for the proposed system. This includes the C4ISR (information exchange) operational concept.

(f) Describes if fielding of increments (time phased) of system capability that support evolutionary acquisition is appropriate for the proposed system.

(2) Threat. Defines the principal threat for the system (e.g., nature of threat, threat tactics, future threat capabilities).

(3) Shortcomings of existing systems and C4ISR architectures. Defines shortcomings of fielded systems to counter all anticipated threats (e.g., weapon system, interoperability, lift). Describes why existing C4ISR architectures (operational, systems and technical views) cannot meet current or projected future (joint) information exchange requirements for the proposed system.

(4) Capabilities Required. The initial ORD will establish requirements describing the capabilities and characteristics of the proposed system. The requirements shall be written in output oriented and measurable terms in Threshold/Objective format with criteria and rationale for each. The ORD shall identify the specific requirements contributing most significantly to the desired operational capability and provide a relative importance of meeting or exceeding each requirement threshold or objective value. This will be used to guide the acquisition community in making trade off decisions between the threshold and objective levels of the stated requirements. The ORD requirements (especially KPPs) and supporting rationale should reflect analytic insights on the preferred alternative(s) identified in the Analysis-of-Alternatives (AOA), cost-schedule-performance tradeoffs, requirements cost tradeoffs, experimentation, test and evaluation, and affordability analysis. The ORD requirements shall be refined at successive milestone decision points based upon the trade-offs made during each phase of the acquisition process. One method to identify requirements is to list all the required capabilities for each mission area/function for the proposed system

(a) Information Exchange Requirements (IERs). The warfighter also needs to identify the top level essential interface requirements for information exchange needed to support the proposed system as described in reference r. IERs identify the elements of warfighter information used in support of a particular activity and between any two activities. IERs are to be used as the primary basis and measure for system interoperability in defining Interoperability KPP threshold (T) and objective (O) requirements for ORDs and CRDs. These IERs should be limited to only the top level requirements that identify the on-board and off-board informational needs for the system to support the interoperability requirement. The IERs will be extracted from the ORD along with the Interoperability KPP and utilized in the C4ISP as one of the tools used to develop the operational architecture for the system. The goal is to use established architectures for information exchange and identify unique system information requirements that can not be supported with current/projected architectures. The intent is to eliminate duplication and having individual systems creating their own (stovepiped) C4ISR architectures.

(b) Interoperability. Joint Pub 1-02 definition (2) for interoperability defines it as the condition achieved among communications-electronics systems or items of communications-electronics equipment when information or services can be exchanged directly and satisfactorily between them and/or their users. Even though there are many facets of interoperability (e.g., fuel, ammunition, transportation, communications) that need to be identified in the ORD the focus for the interoperability ORD KPP will be the information exchange and interoperability level for the ORD system information needs. The intent is for the warfighter to outline the essential information exchange requirements for the system as described above. The requirements should reflect both the information needs necessary to satisfy the system under consideration and the information this new capability can provide to enhance fielded systems. The development of the information exchange requirements should cover both the communication requirements for command and control of the proposed system and the level of integration for cross system operations as depicted in Figure 14.

Information Assurance (IA) is required for all DOD systems that are used to enter, process, store, display, or transmit DOD information regardless of classification or sensitivity. IA is defined as the Information Operations that protect and defend information and information systems by ensuring their availability, integrity, authentication, confidentiality, and non-repudiation and included restoration through protection, detection, and reaction capabilities. To assure balance or risk and gains, IA requirements must be co-developed and co-evolved with those for Information Interoperability (reference i).

(c) ORD Key Performance Parameters (KPPs). ORD KPPs are those system capabilities or characteristics considered essential for successful mission accomplishment. The ORD should only contain a limited number of KPPs (approximately 8 or fewer) that capture the parameters needed to reach the overall desired capabilities for the system. Failure to meet an ORD KPP threshold can be cause for the system selection to be reevaluated or the program to be reassessed or terminated.

ORD KPPs are extracted from the ORD and included in the performance section of the Acquisition Program Baseline (APB) document at each Milestone beginning with Milestone I. ORDs will have an Interoperability KPP. The following guidelines should be applied when selecting KPPs:

- Is it essential for defining system or required capabilities?

- Is it warfighting oriented or does it contribute to the improvement in warfighting capabilities?

- Is it achievable/testable?

- Can the numbers/percentages be explained by analysis?

- If not met, are you willing to look at canceling the program?

(d) ORD KPP Development. Selection of valid KPPs is more than just identifying a requirement and providing a threshold/objective value. A KPP should be a roll-up of a number of supporting requirements developed listed in the ORD. The following is one methodology for developing KPPs:

Step (1) List system required capabilities for each mission/function as described above.

Step (2) Prioritize these requirements.

Step (3) For each mission/function build one measurable performance parameter.

Step (4) Determine the parameters that are most critical to the system and designate them as Key Performance Parameters in the ORD.

Note: All missions/functions for the system to not need to create a KPP. Likewise, certain areas may create two or more KPPs.

(e) ORD Interoperability KPP. The ORD Interoperability KPP should define the level of interoperability for the proposed system. (e.g. PAC-3 ORD Interoperability KPP criteria: TADIL-J (T), Joint Composite Tracking Network (JCTN) (O)). The Interoperability KPP will be derived from the set of IERs that characterize the information exchanges to be performed by the proposed system. ORDs that come under the umbrella of a CRD should ensure compliance with the CRD Interoperability KPP.

(f) ORD sponsor/CRD lead interface. If the ORD falls under a CRD the ORD sponsor will work closely with the CRD lead to ensure ORD/CRD C4ISR interoperability.

(5) Program Affordability. Cost will be addressed in the ORD. Inclusion of cost allows the DOD component sponsor to emphasize affordability early in the proposed

program. The cost figure should be stated in terms of a threshold and objective (not necessarily a KPP) in order to provide flexibility to allow for program evolution and CAIV trade studies. The DOD component sponsor may make cost a KPP if it desires and identify the cost it wishes to evaluate. The cost will be extracted from the ORD and included in the cost section of the APB.

d. ORD Validation Phase. The validation phase for an ORD includes the formal review of the document to confirm the operational requirements for the system. The validation authority for the ORD is dependent upon potential ACAT level and/or if a program is designated JROC special interest.

(1) JROC Validation.

(a) Milestone I. All ACAT I/IA and designated JROC special interest ORDs will be reviewed and their KPPs validated by the JROC at Milestone I.

(b) Milestone II/III. The JROC will review ACAT ID/IAM and JROC special interest ORDs at Milestone II and III to support each milestone decision. The JROC maintains validation authority for ACAT ID/IAM ORDs even if the JROC has delegated ORD approval authority to a DOD component. The JROC will also review the ACAT ID/IAM ORDs if a recommendation is made to change a KPP at any time during the life of a program. The JROC retains authority to review ACAT IC/IAC ORDs if there are changes to JROC validated KPPs, otherwise ACAT IC/IAC ORDs need not return to the JROC for Milestone II and III decisions.

(2) DOD Component Validation. The Chief/Head of a DOD component head (or as delegated) may validate their own ACAT IC/IAC and below ORDs at Milestone II and III, if ORD approval has been delegated to the DOD component and JROC validated KPPs are not changed.

(3) Formal ORD Review. The first step in obtaining validation is the formal review of the document. The review process is described in Enclosure B. Any ORD forwarded for JROC validation is considered draft and must have supporting analysis for proposed KPPs along with the AOA, if appropriate, included in the package.

e. ORD Approval Phase. The ORD approval phase documents the approval authority's concurrence with the final validated document. Approval authority is dependent upon potential ACAT level, if designated JROC special interest, or if approval authority has been delegated. Delegation of approval authority allows the designated lead DOD component, with coordination with the appropriate DOD components, to make requirements trades between acquisition Milestones without JROC approval. Key Performance Parameters or other specifically identified items by the JROC can not be changed without JROC approval.

(1) JROC approval.

(a) Milestone I. The approval authority, at Milestone I, for all potential ACAT I/IA ORDs and KPPs is the JROC. The JROC will normally delegate ORD approval authority for potential ACAT I/IA ORDs to the DOD component sponsor at the Milestone I JROC review. However, the JROC may retain approval authority for selected ACAT I programs. Following JROC approval, the JROC Chairman will forward a Milestone review and lead Service recommendation, including a list of Key Performance Parameters, to USD(A&T) via JROCM for consideration during the DAB or to ASD(C3I) for consideration during the DOD CIO review. If a JROC special interest program is not going to a DAB or DOD CIO review, the recommendations will be forwarded to the appropriate DOD component milestone decision authority.

(b) Milestone II/III. The JROC will approve ACAT ID/IAM and JROC special interest ORDs at Milestone II and III to support each milestone decision. If the JROC retained approval authority for an ACAT I/IA, or JROC special interest program, then the JROC will review the ORD and KPPs prior to each milestone. The JROC Chairman will forward a Milestone review and lead Service recommendation, including a list of Key Performance Parameters, to USD(A&T) via JROCM for consideration during the DAB or to ASD(C3I) for consideration during the DOD CIO review.

(2) DOD component approval. The Chief/Head of the DOD component (or as delegated) are the approval authority ACAT IC/IAC, II and below ORDs if ORD approval has been delegated by the JROC at Milestone I. Approved ORDs are submitted by the approval authority to the appropriate DOD component MDA for action.

f. ORD Review/Revalidation. The ORD is refined and updated when necessary and prior to each acquisition milestone to incorporate results of the activities during each acquisition phase (i.e., cost, schedule, and performance trades, testing, and analysis of alternatives (AOA)). There is no need to update the MNS because the ORD builds upon this initial document. The ORD should be thoroughly reviewed by the DOD component sponsor, including other appropriate DOD components for joint program ORDs. Any changes to the initial ORD will be carefully reviewed by the ORD validation and approval authorities to determine whether or not the changes in the requirements should apply to the system currently being developed, or they should be deferred to subsequent blocks if an evolutionary acquisition approach is used. Also, the ORD validation and approval authorities with assistance from the development and test communities will ensure the deficiencies and requirements are still valid when compared to the latest threat, guidance, and strategy documents. Also, the ORD should be vigorously scrubbed to ensure that the KPPs reflect the minimum essential requirements.

2. Acquisition Program Baseline (APB) Procedures. The APB contains the cost, schedule, and key performance parameters for the program. APBs are described in reference b, section 3.2.2. With progression through the requirements evolution and acquisition milestone process, the APBs will change focus from concept (Milestone I) to development (Milestone II) to production (Milestone III). KPPs from the ORD, combined with cost and schedule measures, will be included within the APB with their associated objectives and thresholds. APBs are prepared by the program manager using

the format specified in Appendix I to reference b. APBs are submitted with the required milestone documentation for Milestone I and each succeeding milestone. The KPPs objectives and thresholds in the APB must be validated by the appropriate authority before the MDA's review. The MDA is the approval authority for all APBs in accordance with reference b, section 3.2.2.1, "Preparation and Approval." Before all major milestone decision reviews for ACAT ID, ACAT IAM, JROC special interest programs and for all APB changes, the JROC will review the APB's cost, CAIV objectives, schedule, and key performance parameters (objectives and thresholds) to ensure they satisfy the mission need.

Appendix A to Enclosure E

Operational Requirements Document Format

Operational Requirements Document
For
Title
ACAT _____
Prepared for Milestone ___ Decision

Date

1. General Description of Operational Capability.

- Summarize the mission need. (If a documented MNS did not precede the ORD, explain the process that investigated alternatives for satisfying mission need).

- Describe the overall mission area.

- Identify CRD the proposed system falls under (if appropriate).

- Describe the proposed system.

- Describe the analysis that supports the proposed system.

- Define the missions that the proposed system will be tasked to accomplish.

- Describe the operations and suppport concepts summarizing the system's place on the future battlefield, its employment/operation, its organizational setting, and its sustaining and support interfaces.

- Describe the C4ISR (information exchange) operational concept.

- Describe the benefits of Evolutionary Acquisition for proposed system (if appropriate). Requirements should be specified in terms of reasonable increments of

capability described in the timeframes that will support evolutionary acquisition approach. The requirements must be time-based with the initial capability targeted for a 6 year IOC from program initiation. Requirements beyond the initial IOC must be specified in a time phased manner and be matched to projected threats. Only those initial requirements that can be validated by the user as needed within the FYDP, should be defined for the initial acquisition. Subsequent requirements would take into account achievements in capability from preceding blocks.

2. Threat. Summarize the threat to be countered and projected threat environment. (Reference DIA or Service Technical Intelligence Center approved documents. For potential MDAPs reference the DIA validated threat assessment.)

3. Shortcomings of Existing Systems and C4ISR architectures.

- Describe why existing systems cannot meet current or projected requirements.

- Describe why existing C4ISR operational, system and technical architecture views cannot meet the requirements for the proposed system.

4. Capabilities required.

- Identify the operational performance parameters (capabilities and characteristics) required for the proposed system.

- Articulate the requirements in output oriented, and measurable terms. Use Threshold/Objective format, and provide criteria and rationale for each requirement. Rationale should include mission unique environment for the system (e.g., wartime, peace-time, transition conditions).

- Timing of requirements should specify the time-based nature of the need and the events that are driving that need.

- ORD Key Performance Parameters (KPPs). Develop the ORD KPPs as outlined in Enclosure D. Figure 15 provides example KPP table summary. Develop the ORD IERs matrix, in accordance with procedures described in the C4ISR Architecture Framework and from the IER matrix develop the Interoperability CRD KPP as outlined in Enclosure D.

Key Performance Parameter	Threshold and Objective
Interoperability	As appropriate
Combat ID	"
Early Warning	"
Etc.	"

Figure 15. -- Example KPP table summary

a. System Performance.

- Describe mission scenarios (wartime and peacetime, if different) in terms of mission profiles, employment tactics, countermeasures, and environmental conditions (all inclusive: natural and man-made, e.g., weather, ocean acoustics, information warfare).

- Identify system performance parameters such as range, accuracy, payload, speed, mission reliability, interoperability, etc. Recommend which parameter shall be considered a Key Performance Parameter.

b. Information Exchange Requirements. Identify the top level Information Exchange Requirements for the system for each mission area that the system is proposed to support (e.g., CAS, AAW, surveillance, reconnaissance) as described in Enclosure E.

c. Logistics and Readiness.

- Include measures for mission-capable rate, operational availability, frequency and duration of preventive or scheduled maintenance actions, etc.

- Describe in terms of mission requirements considering both wartime and peacetime logistics operations.

- Identify combat support requirements including battle damage repair capability, mobility requirements, expected maintenance levels, and surge and mobilization objectives and capabilities.

d. Other System Characteristics. Characteristics that tend to be design, cost and risk drivers.

- Address electronic attack (EA) and Wartime Reserve Modes (WARM) requirements.

- Conventional, initial nuclear weapons effects, and nuclear, biological, and chemical contamination (NBCC) survivability.

- Natural environmental factors (such as climatic, terrain, and oceanographic factors).

- Unplanned stimuli (such as fast cook-off, bullet impact, and sympathetic detonation).

- Address safety issues regarding Hazards of Electromagnetic Radiation to Ordnance (HERO).

- Define the expected mission capability (e.g., full, percent degraded) in the various environments. Include applicable safety parameters such as those related to system, nuclear, explosive, and flight safety.

- Identify physical and operational security needs.

5. Program Support. Establish support objectives for initial and full operational capability. Discuss interfacing systems (at the system/subsystem, platform, and force levels), specifically those related to command, control, communications, computers, and intelligence (C4I), transportation and basing, and standardization and interoperability. Assign a joint potential designation (joint, joint interest, or independent).

a. Maintenance Planning. Identify maintenance tasks to be accomplished and time phasing for all levels of maintenance. Include programmed maintenance and surveillance inspections such as nuclear hardness and structural integrity. Describe the envisioned planning approach for contract versus organic repair.

b. Support Equipment. Define the standard support equipment to be used by the system.

- Describe the test and fault isolation capabilities desired of automatic test equipment at all levels, expressed in terms of realistic and affordable probabilities and confidence levels.

c. C4I/Standardization, Interoperability, and Commonality.

- Describe how the system will be integrated into the command, control, communications, computers and intelligence architecture that is forecast to exist at the time the system will be fielded. Include impact on current/planned C4ISR infrastructure, including methodology for assessment.

- Identify data and data fusion requirements (data, voice, video), computer network support, and anti-jam requirements.

- Identify unique intelligence information requirements, including intelligence interfaces, communications, and data base support pertaining to target and mission planning activities, threat data, etc.

- Describe considerations for joint use, NATO cross-servicing, etc.

- Identify procedural and technical interfaces, and communications, protocols, and standards required to be incorporated to ensure compatibility and interoperability with other Service, joint Service, NATO and other allied and friendly nation systems.

- The system must comply with applicable information technology standards contained in the DOD Joint Technical Architecture (JTA).

- Address interface requirements with Global Command and Control System (GCCS) or Common Operational Picture (COP) (reference j).

- Address Information Assurance (IA) that covers the defensive capabilities that provide for the availability, integrity, authentication, confidentiality, and non-repudiation of the information to be exchanged and used. IA should also include those characteristics needed for restoration through protection, detection, and reaction capabilities. To balance risks and gains, IA and Information Interoperability characteristics must be co-developed and co-evolved. This includes implementation of Public Key Infrastructure (PKI) required to ensure information security over all voice, video, and data transmission. Interconnection of systems operating at different classification levels shall be accomplished by process (e.g., Secret and Below Interoperability (SABI)) that have been approved by the DOD Chief Information Officer (CIO) (references h and i).

- Address energy standardization and efficiency needs for both fuels and electrical power as applicable.

- Address Electromagnetic Environmental Effects (E3) and Spectrum Supportability for systems and equipment.

d. Computer Resources

- Identify computer resource constraints (examples include language, computer, database, architecture, or interoperability constraints).

- Address all mission critical and support computer resources, including automated test equipment.

- Describe the capabilities desired for integrated computer resources support.

- Identify any unique user interface requirements, documentation needs, and special software certifications.

e. Human Systems Integration. Address HSI domains to include:

- Establish broad manpower constraints for operators, maintainers, and support personnel.

- Identify requirements for manpower factors that impact system design (utilization rates, pilot-to-seat ratios, and maintenance ratios).

- Establish broad cognitive, physical, and sensory requirements for the operators, maintainers, or support personnel that contribute to, or constrain, total system performance.

- Establish requirements for human performance that will achieve effective human-system interfaces. Identify requirements for combining, modifying, or establishing new military occupational specialties.

- Describe the training concept to include requirements for training support package (e.g. imulators, training devices, embedded training), and training logistics. Include safety or health and critical errors that reduce job performance or system effectiveness given the operational environment. Determine objectives and thresholds for the above requirements, as appropriate.

f. Other Logistics and Facilities Considerations.

- Describe the provisioning strategy for the system.

- Specify any unique facility, shelter, supporting infrastructure, environmental compliance requirements, and associated costs and availability milestone schedule in support of the requirement.

- Identify special packaging, handling, and transportation considerations.

- Define unique data requirements such as engineering data for depot support and technical orders for the system and depot.

g. Transportation and Basing. Describe how the system will be moved either to or within the theater. Identify any lift constraints. Detail the basing requirements (main and forward operating bases) and associated facilities needed for training.

h. Geospatial Information and Services. Identify cartographic materials, digital topographic data, and geodetic data needed for system employment. Where possible, National Imagery & Mapping Agency standard military data shall be used.

I. Natural Environmental Support. Identify the standard and unique weather, oceanographic, and astrogeophysical support required. Include data accuracy and forecast requirements.

6. Force Structure. Estimate the number of systems or subsystems needed, including spares and training units. This is only an estimate of the number of systems/subsystems needed, and will not serve as the definitive source for documenting the distribution or basis of issue. Identify units or platforms and quantities of these platforms (including other Services' or Government agencies' if appropriate) that will employ the systems or subsystems being developed and procured to satisfy this Operational Requirements Document.

7. Schedule. Define what actions, when complete, will constitute attainment of Initial and Full Operational Capability (leave flexible for these to be revised as the program is progressively defined and trade-off studies are completed).

- Clearly specify the operational capability or level of performance necessary to declare Initial and Full Operational Capability. Include the number of operational systems, operational and support personnel, facilities, supporting infrastructure and organizational, intermediate, and depot support elements that must be in place. If availability in a specific timeframe is important, specify an objective for initial operational capability. Describe the impact if this objective is not achieved and identify a window of acceptability if appropriate.

8. Program Affordability. Cost will be addressed in the ORD. Inclusion of cost allows the DOD component sponsor to emphasize affordability early in the proposed program. The cost figure should be stated in terms of a threshold and objective (not necessarily a KPP) in order to provide flexibility to allow for program evolution and CAIV trade studies. The DOD component sponsor may make cost a KPP if it desires and identify the cost it wishes to evaluate. The cost will be extracted from the ORD and included in the cost section of the APB.

Extracted from Requirements Determination, U.S. Army Training and Doctrine Command, March 1996

Integrated Concept Teams for Requirements Determination

By design, the process is very flexible; it is not a "one size fits all," "heel-to-toe" process. It accommodates spiral development and employs a variety of feedback mechanisms. The process has multiple entry and exit opportunities and is easily tailored to support different types and levels of requirements determination, e.g., Joint or Army tactics, techniques and procedures (TTP), hardware, software, etc. It employs multidisciplinary integrated concept teams (ICTs) representing appropriate major Army commands (MACOMs) and staffs, and appropriate Department of Defense organizations, other federal agencies, industry and academia. This methodology allows a concept to be looked at from many perspectives and crystallize doctrine, training, leader development, organization, materiel and soldier (DTLOMS) requirements more quickly. The ICTs "brainstorm" concepts from both visionary and practical perspectives with the goal of shortening the requirements determination "event" by providing it better early focus. Participation by the Scientific & Technical communities gives the ICT an awareness of the art of the possible, precluding pursuit of "dead end" requirements. The ICTs are not constrained by costs as they explore concepts, but do gather potential cost data that is used by senior leaders later in the requirements determination process. This methodology generates synergy and provides more thorough consideration of desired warfighting capabilities and the means to achieve them, all of which enable Army leaders to make better and faster decisions.

The ICT complements the existing integrated product team (IPT) methodology used by materiel developers to manage system development. Formation of the ICT in early concept development enables the team to transition to an IPT when a materiel requirement is approved at Milestone I. Thus, continuity is maintained from concept to fielding for a materiel solution. The ICT is also applicable to other requirement solutions, e.g., doctrine, training, et al.

Federal Acquisition Regulation -- Part 6

Competition Requirements

(FAC 97-14)
23 November 1999

6.000 -- Scope of Part.

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. As used in this part, full and open competition is the process by which all responsible offerors are allowed to compete. This part does not deal with the results of competition *(e.g.*, adequate price competition), which are addressed in other parts (*e.g.*, Part 15).

6.001 -- Applicability.

This part applies to all acquisitions except --

(a) Contracts awarded using the simplified acquisition procedures of Part 13 (but see 13.501 for requirements pertaining to sole source acquisitions of commercial items under Subpart 13.5);

(b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(c) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition (see 17.207(f)), that are within the scope and under the terms of an existing contract;

(d) Orders placed under requirements contracts or definite-quantity contracts;

(e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when --

(1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or

(2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order; or

(f) Orders placed against task order and delivery order contracts entered into pursuant to Subpart 16.5.

6.002 -- Limitations.

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

6.003 -- Definitions.

"Full and open competition," when used with respect to a contract action, means that all responsible sources are permitted to compete.

"Procuring activity," as used in this part, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term "procuring activity" shall be synonymous with "contracting activity" as defined in Subpart 2.1.

"Sole source acquisition" means a contract for the purchase of supplies or services that is entered into or pro-posed to be entered into by an agency after soliciting and negotiating with only one source.

"Unique and innovative concept," when used relative to an unsolicited research proposal, means that, in the opinion and to the knowledge of the Government evaluator, the meritorious proposal is the product of original thinking submitted in confidence by one source; contains new novel or changed concepts, approaches, or methods; was not submitted previously by another; and, is not otherwise available within the Federal Government. In this context, the term does not mean that the source has the sole capability of performing the research.

Subpart 6.1 -- Full and Open Competition

6.100 -- Scope of Subpart.

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

6.101 -- Policy.

(a) 10 U.S.C.2304 and 41 U.S.C.253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently (10 U.S.C.2304 and 41 U.S.C.253).

6.102 -- Use of Competitive Procedures.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

(a) *Sealed bids.* (See 6.401(a).)

(b) *Competitive proposals.* (See 6.401(b).) If sealed bids are not appropriate under paragraph (a) of this section, contracting officers shall request competitive proposals or use the other competitive procedures under paragraph (c) or (d) of this section.

(c) *Combination of competitive procedures.* If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).

(d) *Other competitive procedures.*

(1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C.541, et seq.) is a competitive procedure (see Subpart 36.6 for procedures).

(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from --

(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and

(ii) A peer or scientific review.

(3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C.259(b)(3)(A) for the multiple award schedule program of the General Services Administration is a competitive procedure.

FAR -- Part 15

Contracting by Negotiation

(FAC 97-14)
23 November 1999

Authority: 40 U.S.C.486(c); 10 U.S.C. chapter 137; and 42 U.S.C.2473(c).

15.000 -- Scope of Part.

This part prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. A contract awarded using other than sealed bidding procedures is a negotiated contract (see 14.101).

15.001 -- Definitions.

As used in this part --

Proposal modification is a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

15.002 -- Types of Negotiated Acquisition.

(a) Sole source acquisitions. When contracting in a sole source environment, the request for proposals (RFP) should be tailored to remove unnecessary information and requirements; e.g., evaluation criteria and voluminous proposal preparation instructions.

(b) Competitive acquisitions. When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the proposal representing the best value to the Government (see 2.101).

Subpart 15.1 -- Source Selection Processes and Techniques

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15.100 -- Scope of Subpart.

This subpart describes some of the acquisition processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition.

15.101 -- Best Value Continuum.

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

15.101-1 -- Tradeoff Process.

(a) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) When using a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and

(2) The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.406.

15.101-2 -- Lowest Price Technically Acceptable Source Selection Process.

(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following apply:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. If the contracting officer documents the file pursuant to 15.304(c)(3)(iii), past performance need not be an evaluation factor in lowest price technically acceptable source selections. If the contracting officer elects to consider past performance as an evaluation factor, it shall be evaluated in accordance with 15.305. However, the comparative assessment in 15.305(a)(2)(i) does not apply. If the contracting officer determines that a small business' past performance is not acceptable, the matter shall be referred to the Small Business

Administration for a Certificate of Competency determination, in accordance with the procedures contained in subpart 19.6 and 15 U.S.C.637(b)(7)).

(2) Tradeoffs are not permitted.

(3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(4) Exchanges may occur (see 15.306).

15.102 -- Oral Presentations.

(a) Oral presentations by offerors as requested by the Government may substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing (see 15.208) and content (see 15.306). Oral presentations provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they may be included in offeror submissions, when appropriate.

(b) The solicitation may require each offeror to submit part of its proposal through oral presentations. However, certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions) shall be submitted in writing.

(c) Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following:

(1) The Government's ability to adequately evaluate the information;

(2) The need to incorporate any information into the resultant contract;

(3) The impact on the efficiency of the acquisition; and

(4) The impact (including cost) on small businesses. In considering the costs of oral presentations, contracting officers should also consider alternatives to on-site oral presentations (e.g., teleconferencing, video teleconferencing).

(d) When oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe --

(1) The types of information to be presented orally and the associated evaluation factors that will be used;

(2) The qualifications for personnel that will be required to provide the oral presentation(s);

(3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

(4) The location, date, and time for the oral presentations;

(5) The restrictions governing the time permitted for each oral presentation; and

(6) The scope and content of exchanges that may occur between the Government's participants and the offeror's representatives as part of the oral presentations, including whether or not discussions (see 15.306(d)) will be permitted during oral presentations.

(e) The contracting officer shall maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (e.g., videotaping, audio tape recording, written record, Government notes, copies of offeror briefing slides or presentation notes) shall be at the discretion of the source selection authority. A copy of the record placed in the file may be provided to the offeror.

(f) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information shall be put in writing. Incorporation by reference of oral statements is not permitted.

(g) If, during an oral presentation, the Government conducts discussions (see 15.306(d)), the Government must comply with 15.306 and 15.307.

Federal Acquisition Regulation

FAR Subpart 15.2 -- Solicitation and Receipt of Proposals and Information

15.200 -- Scope of Subpart.

This subpart prescribes policies and procedures for --

(a) Exchanging information with industry prior to receipt of proposals;

(b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and

(c) Receiving proposals and information.

15.201 -- Exchanges With Industry Before Receipt of Proposals.

(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements (see 3.104). Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements, and enhancing the Government's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are --

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research, as described in part 10;

(4) One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (f) of this section regarding restrictions on disclosure of information);

(5) Presolicitation notices;

(6) Draft RFPs;

(7) RFIs;

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) The special notices of procurement matters at 5.205(c), or electronic notices, may be used to publicize the Government's requirement or solicit information from industry.

(e) RFIs may be used when the Government does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract. There is no required format for RFIs.

(f) General information about agency mission needs and future requirements may be disclosed at any time. After release of the solicitation, the contracting officer shall be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a particular offeror in response to that offeror's request shall not be disclosed if doing so would reveal the potential offeror's confidential business strategy, and would be protected under 3.104 or subpart 24.2. When a presolicitation or preproposal conference is conducted, materials distributed at the conference should be made available to all potential offerors, upon request.

15.202 -- Advisory Multi-Step Process.

(a) The agency may publish a presolicitation notice (see 5.204) that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise the offerors about their potential to be viable competitors. The presolicitation notice should identify the information that must be submitted and the criteria that will be used in making the initial evaluation. Information sought may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance, and limited pricing information). At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition. This process should not be used for multi-step acquisitions where it would result in

offerors being required to submit identical information in response to the notice and in response to the initial step of the acquisition.

(b) The agency shall evaluate all responses in accordance with the criteria stated in the notice, and shall advise each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. The agency shall advise respondents considered not to be viable competitors of the general basis for that opinion. The agency shall inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

15.203 -- Requests for Proposals.

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs for competitive acquisitions shall, at a minimum, describe the --

(1) Government's requirement;
(2) Anticipated terms and conditions that will apply to the contract:

(i) The solicitation may authorize offerors to propose alternative terms and conditions, including the contract line item number (CLIN) structure; and

(ii) When alternative CLIN structures are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (e.g., place of performance or payment and funding requirements) (see 15.206);

(3) Information required to be in the offeror's proposal; and

(4) Factors and significant subfactors that will be used to evaluate the proposal and their relative importance.

(b) An RFP may be issued for OMB Circular A-76 studies. See subpart 7.3 for additional information regarding cost comparisons between Government and contractor performance.

(c) Electronic commerce may be used to issue RFPs and to receive proposals, modifications, and revisions. In this case, the RFP shall specify the electronic commerce method(s) that offerors may use (see subpart 4.5).

(d) Contracting officers may issue RFPs and/or authorize receipt of proposals, modifications, or revisions by facsimile.

(1) In deciding whether or not to use facsimiles, the contracting officer should consider factors such as --

(i) Anticipated proposal size and volume;

(ii) Urgency of the requirement;

(iii) Availability and suitability of electronic commerce methods; and

(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(e) Letter RFPs may be used in sole source acquisitions and other appropriate circumstances. Use of a letter RFP does not relieve the contracting officer from complying with other FAR requirements. Letter RFPs should be as complete as possible and, at a minimum, should contain the following:

(1) RFP number and date;

(2) Name, address (including electronic address and facsimile address, if appropriate), and telephone number of the contracting officer;

(3) Type of contract contemplated;

(4) Quantity, description, and required delivery dates for the item;

(5) Applicable certifications and representations;

(6) Anticipated contract terms and conditions;

(7) Instructions to offerors and evaluation criteria for other than sole source actions;

(8) Proposal due date and time; and

(9) Other relevant information; e.g., incentives, variations in delivery schedule, cost proposal support, and data requirements.

(f) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government and a notice is not required under 5.202 (e.g., perishable items and support of contingency operations or other emergency situations). Use of an oral RFP does not relieve the contracting officer from complying with other FAR requirements.

(1) The contract files supporting oral solicitations should include --

(i) A description of the requirement;

(ii) Rationale for use of an oral solicitation;

(iii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and

(iv) The solicitation number provided to the prospective offerors.

(2) The information furnished to potential offerors under oral solicitations should include appropriate items from paragraph (e) of this section.

15.204 -- Contract Format.

The use of a uniform contract format facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The uniform contract format need not be used for the following:

(a) Construction and architect-engineer contracts (see part 36).

(b) Subsistence contracts.

(c) Supplies or services contracts requiring special contract formats prescribed elsewhere in this part that are inconsistent with the uniform format.

(d) Letter requests for proposals (see 15.203(e)).

(e) Contracts exempted by the agency head or designee.

15.204-1 -- Uniform Contract Format.

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15-1 of this subsection.

(b) Solicitations using the uniform contract format shall include Parts I, II, III, and IV (see 15.204-2 through 15.204-5). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. Section K shall be incorporated by reference in the contract.

Table 15-1. -- Uniform Contract Format

Section	Title
	Part I -- The Schedule
A	Solicitation/contract form.
B	Supplies or services and prices/costs.
C	Description/specifications/statement of work.
D	Packaging and marking.
E	Inspection and acceptance.
F	Deliveries or performance.
G	Contract administration data.
H	Special contract requirements.
	Part II -- Contract Clauses
I	Contract clauses.
	Part III -- List of Documents, Exhibits, and Other Attachments
J	List of attachments.
	Part IV -- Representations and Instructions.
K	Representations, certifications, and other statements of offerors or respondents.
L	Instructions, conditions, and notices to offerors or respondents.

M Evaluation factors for award.

15.204-2 -- Part I -- The Schedule.

The contracting officer shall prepare the contract Schedule as follows:

(a) Section A, Solicitation/contract form.

(1) Optional Form (OF) 308, Solicitation and Offer-Negotiated Acquisition, or Standard Form (SF) 33, Solicitation, Offer and Award, may be used to prepare RFPs.

(2) When other than OF 308 or SF 33 is used, include the following information on the first page of the solicitation:

(i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.

(ii) Solicitation number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror to provide its name and complete address, including street, city, county, state, and zip code, and electronic address (including facsimile address), if appropriate.

(ix) Offer expiration date.

(b) Section B, Supplies or services and prices/costs. Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, nouns, nomenclature, and quantities. (This includes incidental deliverables such as manuals and reports.)

(c) Section C, Description/specifications/statement of work. Include any description or specifications needed in addition to Section B (see part 11, Describing Agency Needs).

(d) Section D, Packaging and marking. Provide packaging, packing, preservation, and marking requirements, if any.

(e) Section E, Inspection and acceptance. Include inspection, acceptance, quality assurance, and reliability requirements (see part 46, Quality Assurance).

(f) Section F, Deliveries or performance. Specify the requirements for time, place, and method of delivery or performance (see subpart 11.4, Delivery or Performance Schedules, and 47.301-1).

(g) Section G, Contract administration data. Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) Section H, Special contract requirements. Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

15.204-3 -- Part II -- Contract Clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this part and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section's format is particularly complex.

15.204-4 -- Part III -- List of Documents, Exhibits, and Other Attachments.

Section J, List of attachments. The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross-references to material in other sections may be inserted, as appropriate.

15.204-5 -- Part IV -- Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) Section K, Representations, certifications, and other statements of offerors. Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(b) Section L, Instructions, conditions, and notices to offerors or respondents. Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or respondents in preparing proposals or responses to requests for information. Prospective offerors or respondents may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of proposal or response parts, such as --

(1) Administrative;

(2) Management;

(3) Technical;

(4) Past performance; and

(5) Cost or pricing data (see Table 15-2 of 15.408) or information other than cost or pricing data.

(c) Section M, Evaluation factors for award. Identify all significant factors and any significant subfactors that will be considered in awarding the contract and their relative importance (see 15.304(d)). The contracting officer shall insert one of the phrases in 15.304(e).

15.205 -- Issuing Solicitations.

(a) The contracting officer shall issue solicitations to potential sources in accordance with the policies and procedures in 5.102, 19.202-4, and part 6.

(b) A master solicitation, as described in 14.203-3, may also be used for negotiated acquisitions.

15.206 -- Amending the Solicitation.

(a) When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.

(c) Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.

(d) If a proposal of interest to the Government involves a departure from the stated requirements, the contracting officer shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see 15.207(b) and 15.306(e)).

(e) If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment (see subpart 4.5, Electronic Commerce in Contracting).

(g) At a minimum, the following information should be included in each amendment:

(1) Name and address of issuing activity.

(2) Solicitation number and date.

(3) Amendment number and date.

(4) Number of pages.

(5) Description of the change being made.

(6) Government point of contact and phone number (and electronic or facsimile address, if appropriate).

(7) Revision to solicitation closing date, if applicable.

15.207 -- Handling Proposals and Information.

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to a request for information (RFI) shall be marked with the date and time of receipt and shall be transmitted to the designated officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See 3.104 regarding the disclosure of source selection information (41 U.S.C.423)). Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

(c) If any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness under 15.208(a), provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

15.208 -- Submission, Modification, Revision, and Withdrawal of Proposals.

(a) Offerors are responsible for submitting proposals, and any revisions, and modifications, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (i.e., regular mail, electronic commerce, or facsimile). If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b)

(1) Any proposal, modification, revision, or withdrawal that is received at the designated Government office after the exact time specified for receipt of proposals is "late" and will not be considered unless it is received before award is made, the contracting officer

determines that accepting the late proposal would not unduly delay the acquisition; and --

(i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government's control prior to the time set for receipt of proposals; or

(iii) It was the only proposal received.

(2) However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Proposals may be withdrawn by written notice at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer must document the contract file when oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offerors request. Where practicable, electronically transmitted proposals that are withdrawn must be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals must only be returned at the offeror's request and expense.

(f) The contracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be considered, unless contract award is imminent and the notice prescribed in 15.503(b) would suffice.

(g) Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(h) If available, the following must be included in the contracting office files for each late proposal, modification, revision, or withdrawal:

(1) The date and hour of receipt.

(2) A statement regarding whether the proposal was considered for award, with supporting rationale.

(3) The envelope, wrapper, or other evidence of date of receipt.

15.209 -- Solicitation Provisions and Contract Clauses.

When contracting by negotiation --

(a) The contracting officer shall insert the provision at Ł410009603:52.215-1Ł, Instructions to Offerors -- Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions.

(1) If the Government intends to make award after discussions with offerors within the competitive range, the contracting officer shall use the basic provision with its Alternate I.

(2) If the Government would be willing to accept alternate proposals, the contracting officer shall alter the basic clause to add a paragraph (c)(9) substantially the same as Alternate II.

(b)

(1) The contracting officer shall insert the clause at Ł410009604:52.215-2Ł, Audit and Records-Negotiation (10 U.S.C.2313, 41 U.S.C.254d, and OMB Circular No. A-133), in solicitations and contracts except those for --

(i) Acquisitions not exceeding the simplified acquisition threshold;

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial items exempted under 15.403-1.

(2) For facilities acquisitions, the contracting officer shall use the clause with its Alternate I.

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

(4) When the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at

Ł410009605:52.215-3Ł, Request for Information or Solicitation for Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) [Reserved]

(e) The contracting officer shall insert the provision at Ł410009607:52.215-5Ł, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at Ł410009608:52.215-6Ł, Place of Performance, in solicitations unless the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at Ł410009609:52.215-7Ł, Annual Representations and Certifications -- Negotiation, in solicitations if annual representations and certifications are used (see 14.213).

(h) The contracting officer shall insert the clause at Ł410009610:52.215-8Ł, Order of Precedence -- Uniform Contract Format, in solicitations and contracts using the format at 15.204.

15.210 -- Forms.

Prescribed forms are not required to prepare solicitations described in this part. The following forms may be used at the discretion of the contracting officer:

(a) Standard Form 33, Solicitation, Offer, and Award, and Optional Form 308, Solicitation and Offer -- Negotiated Acquisition, may be used to issue RFPs and RFIs.

(b) Standard Form 30, Amendment of Solicitation/Modification of Contract, and Optional Form 309, Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) Optional Form 17, Offer Label, may be furnished with each request for proposal.

FAC 97-13

July 2, 1999 (Volume 64, Number 127)
[Federal Register: July 2, 1999 (Volume 64, Number 127)]
[Rules and Regulations]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr02jy99-13]

Part VII
Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.
Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement and Small Entity Compliance Guide; Final Rules

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 12, 14, 15, 19, 26, 33, 52, and 53
FAC 97-13

FAR Case 97-004

RIN 9000-AH59
Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement

Agencies:

Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space Administration (NASA).

Action:

Final rule.

Summary:

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed to adopt the interim rules published in the Federal Register at 63 FR 35719, June 30, 1998; 63 FR 36120, July 1, 1998; 63 FR 52426, September 30, 1998; and 63 FR 71721, December 29, 1998, as final rules with changes. These amendments conform to a Department of Justice (DoJ) model for reform of affirmative action in Federal procurement. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097 (1995).

Dates:

Effective Date: October 1, 1999.
Applicability Date: The policies, provisions, and clauses of this final rule are effective for all solicitations issued on or after October 1, 1999.

For Further Information Contact:

Ms. Victoria Moss, Procurement Analyst, Federal Acquisition Policy Division, General Services Administration, at (202) 501-4764, or Mr. Charles Zuckerman, Office of the Director of Defense Procurement, Department of Defense, at (703) 697-0895. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755. Please cite FAC 97-13, FAR case 97-004.

Supplementary Information:

A. -- Background

DoD, GSA, and NASA issued the following Federal Acquisition Circulars (FACs) to make amendments to the FAR concerning programs for small disadvantaged business concerns:

FAC 97-06, 63 FR 35719, June 30, 1998
FAC 97-07, 63 FR 36120, July 1, 1998
FAC 97-08, 63 FR 52426, September 30, 1998
FAC 97-07 Addendum, 63 FR 71721, December 29, 1998

These amendments conformed to the DoJ model for reform of affirmative action in Federal procurement. This rule revises and finalizes the above interim rules. The Councils received twenty-four letters containing 63 comments in response to the interim rules and considered them in the formulation of this final rule. The Councils made only one significant change to the rule, as follows:

- FAC 97-07 Addendum amended the FAR to allow contractors acting in good faith to rely upon the self-representations of their subcontractors as to their status as small disadvantaged business concerns. The change provided an additional period of time for subcontractors to become certified under rules issued by the Small Business Administration. That time period is being extended to September 30, 1999. Accordingly, this final rule, which becomes effective on October 1, 1999, rescinds the change made by FAC 97-07 Addendum.

- Also, the Councils made several clarifying amendments in this final rule, including removing all references to a list of SDBs to be maintained by the Small Business Administration and referring instead to SBA's PRO-Net database.

- This rule was subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is a major rule under 5 U.S.C. 804.

B. -- Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C.601 et seq., because the rule provides preferences through which the Government may provide small business concerns benefits in Federal contracting. The Final Regulatory Flexibility Analysis (FRFA) is summarized as follows:

- In Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097 (1995), the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs

that use racial or ethnic criteria as a basis for decision-making. Following the decision, the Department of Justice (DoJ) published, at 61 FR 26042 (May 23, 1996), Proposed Reforms to Affirmative Action in Federal Procurement. This DoJ model was implemented in several parts: Small Business Administration (SBA) regulations; publication of the Department of Commerce price evaluation adjustments for use in Federal procurements; and interim FAR rules.

- Four interim FAR rules established in the FAR three procurement mechanisms benefiting small disadvantaged businesses (SDBs). The first mechanism is a price evaluation adjustment of up to 10 percent in certain two-digit Standard Industrial Classification (SIC) Major Groups. The second mechanism is a source selection evaluation factor or subfactor for planned SDB participation in the performance of a contract. The third mechanism provides for a monetary incentive for subcontracting with SDBs.

- We received one public comment that specifically addressed the Initial Regulatory Flexibility Analysis. That comment provided that the rule imposes a complicated tracking system and will not increase opportunities for small disadvantaged businesses. We made no changes to the rule based on this comment. While we recognize that the rule calls for more detailed reporting of SDB subcontractors in order to comply with the DoJ proposal, no alternatives to that reporting exist. The commenter provided no evidence to support the commenter's opinion that this rule will not increase opportunities for small disadvantaged businesses. It is our opinion that, to the contrary, this rule will increase opportunities for such firms, particularly in the award of prime contracts by civilian agencies that, unlike DoD, have not previously granted procurement preferences to SDBs. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Council will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C.610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, et seq. (FAC 97-13, FAR Case 97-004), in correspondence.

C. -- Paperwork Reduction Act

The Paperwork Reduction Act (Pub.L.104-13) applies because the rules being converted to a final rule contain reporting and recordkeeping requirements. OMB approved the information collections under OMB clearance numbers 9000-0007 through June 30, 2000, and 9000-0150 through June 30, 2000. This final rule does not affect those previously approved information collection requirements.

List of Subjects in 48 CFR Parts 1, 12, 14, 15, 19, 26, 33, 52, and 53 Government procurement.

Dated: June 25, 1999.

Edward C. Loeb,
Director,

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;
(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
(iii) It is identified, on the date of its representation, as a certified small disadvantaged business (SDB) concern in the database maintained by the Small Business Administration (PRO-Net); or

(2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as an SDB by the SBA prior to contract award.

* * * * *

3. Amend section 19.304 to revise paragraph (c)(1) to read as follows:

19.304 -- Disadvantaged Business Status.

* * * * *

(c) * * *

(1) If the apparently successful offeror has represented that it is currently certified as an SDB, the contracting officer may confirm that the concern is identified as a small disadvantaged business concern by accessing SBA's database (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

* * * * *

4. Amend section 19.703 to add two new sentences after the first sentence of paragraph (b) to read as follows:

19.703 -- Eligibility Requirements for Participating in the Program.

* * * * *

(b) * * * The clause at 52.219-25, Small Disadvantaged Business Participation Program -- Disadvantaged Status and Reporting, requires the contractor to obtain representations of small disadvantaged status from subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at 52.219-22, Small Disadvantaged Business Status. The clause requires the contractor to confirm that a subcontractor representing itself as a small disadvantaged business

concern is identified by SBA as a small disadvantaged business concern by accessing SBA's database (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility. * * *

5. Revise section 19.1102 to read as follows:

19.1102 -- Applicability.

(a) Use the price evaluation adjustment in competitive acquisitions in the authorized SIC Major Groups.

(b) Do not use the price evaluation adjustment in acquisitions --

(1) That are less than or equal to the simplified acquisition threshold;

(2) That are awarded pursuant to the 8(a) Program;

(3) That are set aside for small business concerns;

(4) That are set aside for HUBZone small business concerns;

(5) Where price is not a selection factor so that a price evaluation adjustment would not be considered (e.g., architect/engineer acquisitions); or

(6) Where all fair and reasonable offers are accepted (e.g., the award of multiple award schedule contracts).

6. Amend section 19.1103 to revise paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (b) to read as follows:

19.1103 -- Procedures.

(a) * * *

(2) An otherwise successful offer of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.402;

(3) An otherwise successful offer where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

(4) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution; or

(5) For DoD acquisitions, an otherwise successful offer of qualifying country end products (see DFARS 225.000-70 and 252.225-7001).

(b) Apply the factor to a line item or a group of line items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the price evaluation adjustment.

* * * * *

7. Amend section 19.1104 to revise the heading and the first sentence to read as follows:

19.1104 -- Contract Clause.

Insert the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, in solicitations and contracts when the circumstances in 19.1101 and 19.1102 apply. * * *

8. Amend section 19.1202-3 to revise the introductory text to read as follows:

19.1202-3 -- Considerations in Developing an Evaluation Factor or Subfactor.

In developing an SDB participation evaluation factor or subfactor for the solicitation, agencies may consider

* * * * *

19.1202-4 -- Amended

9. In section 19.1202-4, remove paragraph (c).

Part 26 -- Other Socioeconomic Programs

10. Revise section 26.304 to read as follows:

26.304 -- Solicitation Provision.

Insert the provision at 52.226-2, Historically Black College or University and Minority Institution Representation, in solicitations exceeding the micro-purchase threshold, for research, studies, supplies, or services of the type normally acquired from higher educational institutions. For DoD, NASA, and Coast Guard acquisitions, also insert the provision in solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

Part 52 -- Solicitation Provisions and Contract Clauses

11. Amend section 52.212-3 to revise the date of the provision and paragraph (c)(7)(i)(A) to read as follows:

52.212-3 -- Offeror Representations and Certifications -- Commercial Items (Oct 1999)

* * * * *

Offeror Representations and Certifications -- Commercial Items (Oct 1999)

* * * * *

(c) * * *

(7) * * *

(i) * * *

(A) It/__/is,/__/is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

* * * * *

12. Amend section 52.219-8 to revise the date of the clause and paragraph (c)(3) to read as follows:

52.219-8 -- Utilization of Small Business Concerns (Oct 1999)

* * * * *

Utilization of Small Business Concerns (Oct 1999)

* * * * *

(c) * * *

(3) Small business concern owned and controlled by socially and economically disadvantaged individuals and small disadvantaged business concern mean a small business concern that represents, as part of its offer that --

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

* * * * *

13. Amend section 52.219-9 to revise the date of the clause and paragraph (d)(5) to read as follows:

52.219-9 -- Small Business Subcontracting Plan (Oct 1999)

* * * * *

Small Business Subcontracting Plan (Oct 1999)

* * * * *

(d) * * *

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, HUBZone, small disadvantaged and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

* * * * *

14. Amend section 52.219-22 to revise the date of the provision and paragraph (b)(1)(i)(C) to read as follows:

52.219-22 -- Small Disadvantaged Business Status (Oct 1999)

* * * * *

Small Disadvantaged Business Status (Oct 1999)

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net); or

* * * * *

15. Amend section 52.219-23 to revise the date of the clause and paragraphs (a)(1)(iii) and (b) to read as follows:

52.219-23 -- Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 1999)

* * * * *

Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 1999)

(a) * * *

(1) * * *

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net).

* * * * *

(b) ***Evaluation adjustment.***

(1) The Contracting Officer will evaluate offers by adding a factor of _____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except --

(i) Offers from small disadvantaged business concerns that have not waived the adjustment;
(ii) An otherwise successful offer of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see section 25.402 of the Federal Acquisition Regulation (FAR));
(iii) An otherwise successful offer where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;
(iv) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution; and
(v) For DoD acquisitions, an otherwise successful offer of qualifying country end products (see sections 225.000-70 and 252.225-7001 of the Defense FAR Supplement).

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the factor.

The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

* * * * *

16. Amend section 52.219-25 to revise the date of the clause and paragraph (a) to read as follows:

52.219-25 -- Small Disadvantaged Business Participation Program -- Disadvantaged Status and Reporting (Oct 1999)

* * * * *

Small Disadvantaged Business Participation Program -- Disadvantaged Status and Reporting (Oct 1999)

(a) Disadvantaged status for joint venture partners, team members, and subcontractors. This clause addresses disadvantaged status for joint venture partners, teaming

arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

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[FR Doc. 99-16855 Filed 7-1-99; 8:45 am]
Billing Code 6820-EP-P

Federal Acquisition Regulation

Small Entity Compliance Guide

[Federal Register: July 2, 1999 (Volume 64, Number 127)]|
[Rules and Regulations]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr02jy99-14]

Department of Defense

General Services Administration National Aeronautics and Space Administration
48 CFR Chapter 1 Federal Acquisition Regulation; Small Entity Compliance Guide

Agencies:

Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space Administration (NASA).

Action:

Small entity compliance guide.

Summary:

This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97-13 which amends the Federal Acquisition Regulation (FAR). A Final Regulatory Flexibility Analysis (FRFA) has been prepared in accordance with 5 U.S.C.604. Interested parties may obtain a copy of the FRFA from the FAR Secretariat. In addition, interested parties may obtain further information regarding this rule by referring to FAC 97-13, which precedes this document. This document is also available via the Internet at http://www.arnet.gov/far.

For Further Information Contact:

Laurie Duarte, FAR Secretariat, at (202) 501-4225. For clarification of content, contact Victoria Moss, Procurement Analyst, General Services Administration, at (202) 501-4764.

Reform of Affirmative Action in Federal Procurement

FAC 97-13, FAR Case 97-004. FAR Parts 19, 26, and 52 are amended to rescind the changes made in FAC 97-07 Addendum and finalize interim rules published in FACs 97-06, 97-07, and 97-08. These rules establish in the FAR three procurement mechanisms benefiting small disadvantaged businesses (SDBs).

The first mechanism is a price evaluation adjustment of up to ten percent in certain two-digit Standard Industrial Classification (SIC) Major Groups. The second mechanism is a source selection evaluation factor or subfactor for planned SDB participation in the performance of a contract. The third mechanism provides for a monetary incentive for subcontracting with SDBs.

Dated: June 25, 1999.

Edward C. Loeb,
Director,
Federal Acquisition Policy
Division.

[FR Doc. 99-16856 Filed 7-1-99; 8:45 am]
Billing Code 6820-EP-P

FAC 97-05

June 22, 1998 (Volume 63, Number 119)
[Federal Register: June 22, 1998 (Volume 63, Number 119)]
[Rules and Regulations]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr22jn98-17]

Part III
Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulation (FAR); Final Rule

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Circular 97-05; Introduction

Agencies:

Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

Action:

Summary presentation of final and interim rules, and technical amendments and corrections.

Summary:

This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-05. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at http://www.arnet.gov/far.

Dates:

For effective dates and comment dates, see separate documents which follow.

For Further Information Contact:

The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-05 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR Case	Analyst
I.	Subcontract Consent.	95-011	Klein.
II.	Availability of Specifications.	97-034	DeStefano.

III.	Liquidated Damages.	89-042/97-300	Moss.
IV.	Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts.	97-042	DeStefano .
V.	Rehabilitation Act, Workers With Disabilities (Interim).	96-610	O'Neill.
VI.	Trade Agreements Thresholds.	97-044	Linfield.
VII.	Restrictions on Purchases from Sudan.	97-301	Linfield.
VIII.	Software Copyrights.	97-614	O'Neill.
IX.	Travel Reimbursement	97-007	Nelson.
X.	No-Cost Value Engineering Change Proposals (Interim).	96-011	Klein.
XI.	Technical Amendments.		
XII.	Availability of FAR via Internet.		

Supplementary Information:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-05 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I -- Subcontract Consent (FAR Case 95-011)

This final rule amends FAR Parts 4, 22, 35, 36, 44, and 52 to reduce requirements for consent to subcontract. The rule eliminates consent requirements for contractors that have an approved purchasing system, except when specific contracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts.

Item II -- Availability of Specifications (FAR Case 97-034)

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211-1, 52.211-2, and 52.212-1 to update addresses and other information regarding the availability of specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

Item III -- Liquidated Damages (FAR Cases 89-042 and 97-300)

This final rule amends FAR Parts 11, 19, 52, and 53 to clarify policy on liquidated damages and commercial subcontracting plans pertaining to requirements for subcontracting with small, small disadvantaged, and women-owned small business concerns. The rule implements Section 304 of the Business Opportunity Development Reform Act of 1988 (Pub.L.100-656) and OFPP Policy Letter 95-1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published in FAC 84-50, FAR case 89-042, 54 FR 30708, July 21, 1989, has been merged with this final rule.

Item IV -- Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts (FAR Case 97-042)

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. The FAR Part 15 rewrite in FAC 97-02 eliminated non-

statutory fee limitations for cost-plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming changes to FAR Part 16.

Item V -- Rehabilitation Act, Workers With Disabilities (FAR Case 96-610)

This interim rule amends FAR Subpart 22.14 and the clauses at 52.212-5 and 52.222-36 to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. The dollar threshold for use of the clause at 52.222-36 has been increased from $2,500 to $10,000.

Item VI -- Trade Agreements Thresholds (FAR Case 97-044)

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the Federal Register on January 14, 1998 (63 FR 2295).

Item VII -- Restrictions on Purchases from Sudan (FAR Case 97-301)

This final rule amends FAR 25.701 and the clause at 52.225-11 to add Sudan to the list of countries whose products are banned from importation into the United States. This rule implements Executive Order 13067, dated November 3, 997.

Item VIII -- Software Copyrights (FAR Case 97-614)

This final rule amends FAR 27.405 to add contracts for certain computer software programs to the list of examples of contracts for special works to which the Government may obtain copyrights.

Item IX -- Travel Reimbursement (FAR Case 97-007)

The interim rule published as Item IX of FAC 97-03 is converted to a final rule without change. The rule amends FAR 31.205-46 to increase from $25.00 to $75.00 the threshold at which contractor personnel must provide a receipt to support travel expenditures.

Item X -- No-Cost Value Engineering Change Proposals (FAR Case 96-011)

This interim rule revises FAR 48.104-3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

Item XI -- Technical Amendments

Amendments are being made at FAR 5.201(b)(2), 8.404(a), 31.002, and 45.607-2(b) to update references and make editorial changes.

Item XII -- Availability of FAR via Internet

The FAR, along with Federal Acquisition Circulars and other informational items, is available on the Internet at http://www.arnet.gov/far.

Dated: June 11, 1998.

Edward C. Loeb,
Director, Federal Acquisition
Policy Division.

June 22, 1998.

Federal Acquisition Circular (FAC) 97-05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-05 are effective August 21, 1998, except for Items V, X, and XI, which are effective June 22, 1998.

Dated: June 11, 1998.

Eleanor R. Spector,
Director, Defense Procurement.

Dated: June 11, 1998.

Ida M. Ustad,
Deputy Associate Administrator,
Office of Acquisition Policy,
General Services Administration.

Dated: June 10, 1998.

Tom Luedtke,
Deputy Associate Administrator for
Procurement, National Aeronautics
and Space Administration.

[FR Doc. 98-16111 Filed 6-19-98; 8:45 am]
Billing Code 6820-EP-P

Appendix D

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Appendix E

National Acquisition Strategy Team Members

Michael W. Boudreau, Colonel, US Army (Ret)

COL Boudreau came to the Naval Postgraduate School from Warren, Michigan where he was the Army's Project Manager, Family of Medium Tactical Vehicles, 1992-1995. He commanded the Materiel Support Center, Korea, 1989-1991. As a lieutenant colonel, he served as Military Assistant to the Under Secretary of the Army, 1986-1988. He commanded the Detroit Arsenal Tank Plant, 1982-1984. He held numerous acquisition and logistics staff positions in the Abrams Tank System Office; the Army Tank-Automotive Command; and the United States Army, Europe. He served as a logistics advisor in the Military Assistance Command, Vietnam and commanded a maintenance company in Europe. COL Boudreau is a graduate of the Industrial College of the Armed Forces; Defense Systems Management College; Army Command and General Staff College; Long Armour-Infantry Course, Royal Armoured Corps Centre, United Kingdom; and Ordnance Officer Basic and Advanced courses. He retired from active duty in October 1995, after serving more than 28 years. He holds a Bachelor of Mechanical Engineering degree (1964) and Master of Business degree (1966) from Santa Clara University, California.

J. Holmes Armstead, J.D., Ph.D.

Dr. Jim Armstead comes to Team Poland from National Security Affairs Department at the Naval Postgraduate School where he is a Visiting Professor, teaching Regional Security, environmental policy law and international law for the past three years. Professor Armstead has practiced law for twenty-five years in Chicago, Washington D.C., Los Angeles and London. He has practiced with 3 prestigious law firms and several government agencies. Professor Armstead's military experience in the Army includes active and reserve tours as an armor officer, JAG officer and Civil Affairs officer with assignment as a special staff assistant to the Secretary of the Army. Over the years, Professor Armstead has taught at the University of Nevada where he also served as Deputy Director of the Great Business Policy Research Institute, Pepperdine University, Lewis University, Southern University, the Richmond College (the University of London) and the Universite d' Pau in France. In 1996, Professor Armstead served as visiting legal expert with the United Nations in Vienna, Austria where he assisted in drafting the new International Criminal Code and the treaty creating the International Criminal Court. He received his J.D., in1975 from De Paul University in Chicago, studied international affairs and regional planning at the University of Illinois, and was awarded a Ph.D. in public policy from Pacific Western University (Los Angeles) in 1981. His dissertation concerning Lightweight Power Projection was funded by the Defense Nuclear Agency at the RAND Corp in Santa Monica. Professor Armstead is a Visiting Scholar (1999-2000) with the Hoover Institution at Stanford University examining environmental security, human rights and peacekeeping issues. He frequently lectures for the Naval War College, the National Judicial College and serves as an Adjunct Professor of Law at Santa Clara University. He has published articles in prestigious law journals and chapters in two books on Environmental law/policy problems. Professor Armstead represented the United States in Canada during the Acid Rain Treaty negotiations and has advised several Congressional committees. He also holds a Certificate in International Law from the Institute Superiore Internationale Criminali Science in Seracusa, Italy.

Richard Doyle, Ph.D.

Richard Doyle is an Associate Professor at the Naval Postgraduate School, Monterey, California, where he teaches courses in public budgeting, defense technology policy and DoD resource and policy analysis. He also teaches in the Executive Management Education program developed for the Navy's Bureau of Medicine and Surgery, the civil-military affairs curriculum of the Center for Civil-Military Relations and the Center for Executive Education, both at the Naval Postgraduate School. His principal areas of research include the defense budget, defense technology policy, the congressional budget process, health care and other entitlement programs. His work has been published in *Global Affairs, Public Budgeting and Finance, Policy Studies Journal, Legislative Studies Quarterly, Judicature, Armed Forces and Society, Defense Analysis, Military Review* and the *International Encyclopedia of Public Policy and Administration.*
Professor Doyle received a Bachelor of Science degree in International Affairs from the USAF Academy in 1969. He served as an Air Force Intelligence officer in the Tactical Air Command, including a tour in Vietnam in 1971-72. Following service in the Air Force, Professor Doyle received an MA and PhD in Political Science from the University of Washington. After teaching Political Science for several years in the Pacific Northwest, Dr. Doyle accepted a position as Legislative Assistant for Defense and Foreign Policy for Senator Slade Gorton, in Washington, D.C. In 1987 he joined the staff of the Senate Budget Committee, serving Senator Pete Domenici as Senior Analyst for Defense. He has been on the faculty at the Naval Postgraduate School since 1990. In 1996 he received tenure, as well as the Admiral John Jay Schieffelin Award for Excellence in Teaching, the highest award for teaching at the School.
In 1999 he became a Fellow with the Inter-University Seminar on Armed Forces and Society.

Leroy J. Haugh, J.D.

Mr. Haugh, after 14 years as Vice President, Procurement and Finance, Aerospace Industries Association, left in January 1999 to become a private Government Business Consultant. His responsibilities at AIA covered the entire spectrum of the acquisition process. He prepared, presented and defended industry positions on all proposed legislation, policies and regulations which impacted or might impact acquisition, including intellectual property rights, tax matters, industrial base issues, industrial security, and numerous others. He is currently employed by AIA as a consultant.

His prior experience included military (Navy) service during WWII and Korea, followed by over 30 years with the government in the procurement field, at both operational and policy levels. Positions held included: Director of Contract Placement and Finance, Office of the Assistant Secretary of Defense, (Installations and Logistics); Deputy Director of Procurement, Office of Assistant Secretary of the Navy (Installations & Logistics); and Associate Administrator, Office of Federal Procurement Policy, Office of Management and Budget. After leaving the government in 1984 he was briefly a consultant to Harbridge House Incorporated before joining the Aerospace Industries Association in February 1985.

Education: BA (Political Science), College of St. Thomas, St. Paul, MN; JD, Georgetown University; MSBA, George Washington University; and graduate of the Industrial College of the Armed Forces.

Affiliations: Member of the Bar in Virginia and the District of Columbia; the Federal Bar Association; American Bar Association (Public Contract Law Section); and Board of Advisors of the National Contract Management Association.

Mr. Haugh was one of the 13 members of the Acquisition Law Advisory Panel (Section 800 Panel), set up by a provision in the FY 91 DoD Authorization Act to review all DoD acquisition laws and make recommendations for streamlining and simplifying. Its 1800 page report to Congress in January 1993 was the foundation for the Federal Acquisition Streamlining Act of 1994. He has been a key participant in industry-wide acquisition reform efforts throughout the last decade, both in initiating legislative proposals and in developing implementing regulations.

Publications: Mr. Haugh has authored or co-authored numerous articles and reports on a wide range of subjects in the acquisition field. His 1966 Master's thesis on Foreign Military Sales was published as a monograph by George Washington University and used for many years as an authoritative source of information on that subject. He was a principal architect and author of the Proposal for a Uniform Federal Procurement System, presented to Congress by the Office of Federal Procurement Policy in 1981, and also of OFPP's Study of DoD Spare Parts Procurement in 1984. Other publications include: the Statutory and Regulatory Foundations of Procurement, published by the National Contract Management Association in 1983; several articles in the NCMA Journal describing the Federal Acquisition Regulation (FAR) and the FAR system; and an article

published by the ABA Public Contract Section titled "Is There a Tunnel at the end of the Light?" which traced the development of the current regulations on rights in technical data.

Other pertinent experience: Frequent lecturer at procurement training classes, executive refresher courses, and seminars covering the entire spectrum of acquisition and business management. Adjunct Professor at the University of the District of Columbia School of Business in 1983 and 1984; and adjunct Professor, Marymount University (MBA program), in 1985-1987. Visiting lecturer at both UDC and Marymount, and at graduate programs offered by George Washington University, American University, University of Virginia, the Navy Postgraduate School, and others. Visited Beijing, China in the fall of 1999 at the request of the Chinese government Ministry of Finance to discuss the U.S. Government procurement system.

Commander Jeffrey R. Cuskey, US Navy

Commander Jeffrey R. Cuskey, SC, USN is currently assigned to the Naval Postgraduate School (NPS), Monterey, California as a Systems Management faculty member in the Acquisition and Contracting Management Curriculum and Course Coordinator for Major Weapon System related acquisition management courses. In his current position, CDR Cuskey is qualified to provide graduate level education to mid grade and senior military officers in the following professional fields: Program Management, Acquisition Management, Pre-Award and Post-Award Contracting, Field Contracting, Contingency Contracting, Service Contracting, Research and Development Contracting, Acquisition Reform, Business Financial Management and Major Defense Systems Acquisition and Contract Management. CDR Cuskey has been designated an Acquisition Career Professional by the Assistant Secretary of the Navy for Research, Development and Acquisition. He holds an undergraduate degree in Political Science from the University of Delaware, a Master of Science in Management degree from the Naval Postgraduate School and a Level III DAWIA Certification in Contracting. He reported to NPS's Systems Management Department in July 1997 from the Naval Air Systems Command (NAVAIR). While assigned to NAVAIR, CDR Cuskey performed duties as a Warranted Contracting Officer for the F/A-18E/F "Super Hornet" Program and as the Business Financial Manager (BFM) for the Navy's F/A-18 Strike Fighter Program. In addition to his recent Major Weapon Systems acquisition experience, CDR Cuskey received post-award contract management training while assigned as a Navy Acquisition and Contracting Officer Intern at Defense Contract Administration Services Management Area (DCASMA) Philadelphia. Outside of the acquisition and contracting field, he has held various operational, administrative, staff and management positions, including such diverse jobs as Fleet Plans Officer and Assistant Strike Warfare Officer for Commander Sixth Fleet and Assistant Supply Officer of a Combat Stores Ship during Operations Desert Storm and Desert Shield. CDR Cuskey is married to the former Patricia Brady of Willow Street, PA. They are the parents of seven year old twin daughters, Karina and Kaitlin.

Captain John E. Mutty, US Navy, Retired

John E. Mutty is a member of the Financial Management Faculty of the Naval Postgraduate School where he teaches courses in DoD financial management. He is the immediate past incumbent of the RADM Peter C. Conrad Chair of Financial Management. He is a retired Navy Captain whose previous assignments include a variety of operational and staff tours. Significant billets in Washington DC included the following: Comptroller for the Naval Air Systems Command; Deputy Director for the Investment and Development Division of the Office of Budget and Reports on the staff of the Assistant Secretary of the Navy (Financial Management and Comptroller); Head of the Congressional Liaison Branch and Air ASW Analyst in the Office of Program Appraisal on the staff of the Secretary of the Navy; and Head of the Educator Liaison Branch, Navy Recruiting Command. He is a former P-3 Orion pilot who, in addition to his Washington experience, had numerous operational tours. While assigned to various patrol squadrons, he deployed to Keflavik, Iceland; Rota, Spain; Sigonella, Sicily; Bermuda; and Lajes, Azores. He was Commanding Officer of Patrol Squadron Sixteen, based in Jacksonville, FL. and he served as the Chief of Staff for the Commander Maritime Surveillance and Reconnaissance Forces Sixth Fleet in Naples, Italy. He is a graduate of the United States Naval Academy, the Naval War College, and has an MS in Financial Management from the George Washington University.